Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNTIED STATES

October Term, 1998

MICHAEL M. SHERMAN,

Petitioner,

vs.

STATE BAR OF CALIFORNIA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
AFTER A DECISION BY THE
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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In Propria Personia

June 19, 1998

289 pp

QUESTIONS PRESENTED

1. Whether this Court should grant certiorari to resolve whether or not Petitioner's due process rights as guaranteed his under both the United States Constitution and the Constitution of the State of California were violated by the State Bar of California and the California Supreme Court in their denial of action against the Petitioner's previous attorneys

LIST OF PARTIES

All parties appear in the caption of the case on the cover page with the exception of the Petitioner's previous attorneys to which the underlying complaints were lodged, John Klopfenstein (State Bar No. 164905) and Michael R. Polin (State Bar No. 130463).

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari be issued to review the Order issued by the Supreme Court of California denying review of the California State Bar's decision to not discipline the Petitioner's two previous attorney's despite the enormous amounts of evidence which demonstrate their negligence, intimidation, collusion, and lack of proper ethics as toward the Petitioner.

OPINIONS BELOW

The Order of the Supreme Court denying the review is unreported. (App., *infra* 22) The Order of the California Supreme Court denying reconsideration of the matter is unreported.(App., infra 1) And, the Opinion of the California State Bar denying action against the underlying attorneys is unreported.

JURISDICTION

This Petition is from a denial of review by the California Supreme Court which affirms a lower court judgment which Petitioner alleges violated his constitutional rights to due process.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Fifth and Fourteenth Amendment to the United States Constitution, Code of

Ethics of the State of California.

STATEMENT OF THE CASE

The Petitioner herein, Michael M. Sherman ("hereinafter referred to as "Petitioner"), was the complainant in two complaints filed with the State Bar of California ("Respondent") as to two attorneys that represented him in the matter of *Sherman v. Sherman, LASC, Case No. BC085156.*

The Petitioner, Michael M. Sherman ("hereinafter referred to as Petitioner") had previously filed a case on or about July 15, 1993. In the underlying action, the Petitioner sought to enforce an oral trust in real and personal property; establish a constructive trust in real and personal property; partition real property; obtain an accounting; obtain declaratory relief and obtain damages for breach of fiduciary duty (the "Complaint").

The named defendants in the action were the Petitioner's brother, Jerome Sherman, and Mrs. Pat Perdue Plascencia.

The action arose out of Petitioner's and Respondent's respective ownership rights to some 56-57 real estate trust properties in California and New York, and various personal trust property, including, trust supplies, equipment, vehicles, bank and security box vault items of parents Eva and Nathan Sherman, and Petitioner, all total valued in excess of Fifteen Million Five Hundred

Thousand Dollars, ($15,500,000.00), and Petitioner's and defendants respective rights to the income and benefits from the 56-57 real estate trust properties and various personal trust property, the trust in existence for over sixty (60) years in California and New York, which was used to Respondent and Co-Respondent's benefit.

On or about October 7, 1994 the Petitioner retained the service of attorney John Klopfenstein (State Bar No. 164905) to represent him in this matter.

On or about January 13, 1995 the Petitioner also retained the services of Michael R. Polin (State Bar No. 130463) to replace Klopfenstein, as his attorney of record; however Polin, was, as he latter informed the Petitioner after the Petitioner had retained him, due to his schedule only able to review certain documents, advise and supervise Klopfenstein on the Petitioner's cases, and prepare written opinions and procedural assistance and settlement strategies on my case.

During the litigation the Petitioner felt that his attorneys grossly mishandled the administration of the case.

The litigation was finally set for Final Settlement Conference on February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

The Honorable Edward M. Ross in response to the Petitioner's attorney's

estimation of trial length being 5 to 10 days demonstrated his own opinion of the case by surmising, to wit:

"THE COURT: All right. What's your time estimate?
MR. KLOPFENSTEIN: I think five to ten days, your Honor, is a realistic time estimate.
THE COURT: I don't.
MR. KLOPFENSTEIN: I know you don't.
THE COURT: I don't. I think maybe a half hour is a more realistic time estimate. You know, there is an old saying Mr. Klopfenstein, something about if you can't dazzle them with brilliance, baffle them with bull. You have given me these exhibits here with a thousand pages.
MR. KLOPFENSTEIN: I have some additional ones, your Honor.
THE COURT: No, you don't. No, you don't. If they are not in the exhibit book that's been submitted, you don't have any. .."

Furthermore the lower Court went on to point out the obvious discrepancies with the case, caused by the negligence of the Petitioner's counsel, to wit:

THE COURT: . . . But what you have got, let me tell you what you have got. First of all, I can't see any way that I am not

going to sustain the objections that Mr. Deroy has filed for Exhibits 1 through 38 and 45, I think it was.

You have got what appears to be an insolvable problem with the Probate Code on the Statute of Frauds. You can't have an oral trust. I mean, its not my ruling; its the legislature that says you can't have an oral trust.

There no question, there is no question but that Jerome put a lot of property in Michael's name over the course of the years. That's a gimme. But you've given me roughly 1,000 pages, 99 percent of which have absolutely no relevance to any issue here. A bunch of deeds - - I mean, it's interesting to see how they did things in New York in the twenties and thirties and see all those old deeds. And you have got some lot book descriptions, you've got all kinds of things in there. But, you know, an awful lot of chaff but no wheat.

What you do have is a few properties where, if, in fact, you have a legitimate constructive trust, you can pursue that.

MR KLOPFENSTEIN: Well, your

> *Honor, we have six properties*[1] *that are clearly. . . that we have six properties that both Jerome and Michael Sherman are tenants in common on, that at this time or at the time of the trial, we would ask for dec relief on that, your Honor, and an accounting.*

The lower Court went on to further point out problems caused by the Petitioner attorneys' lack of proper trial preparation, to wit:

> *"THE COURT: . . . And if you can show how a constructive trust can apply, if you can show how Michael, notwithstanding the 1983 letters, notwithstanding the 1983 document*[2] *that evidently his attorney at that time prepared*

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1 It is interesting here to note that the original complaint involved approximately 57 properties.

2 The 1983 document referred to by the Court, as will be later addressed herein refer to purported documents, one of which was unsigned, which were purportedly used in the Appellant's divorce some 12 - 13 years previous, in which the opposing counsel was semi-involved representing the Appellant's and Respondent's trust interests.

saying that even though we hold these properties in our joint names they were for my benefit and they all belong to Jerome; then if you can proof [sic] that, in fact, Michael put something into it that's fine. Certainly happy to hear that, as a constructive trust.

MR KLOPFENSTEIN: Okay. Well we think we can, your Honor.

THE COURT: You actually have evidence that Michael put monies into these properties?

MR. KLOPFENSTEIN: Yes.

THE COURT: All right. Where is the evidence?

MR. KLOPFENSTEIN: We have checks, your Honor, we - -

THE COURT: No, you don't have checks. You may think, counsel, that our court rules are just for filing, but look at Rule 7.9. Even if you ignore my final status conference order, look at Rule 7.9(D), which requires you to submit the documentary evidence in the exhibits. You are not going to bring checks in now that you haven't submitted. I've looked through these exhibits. I take the time to look through them, even the thousand pages or so. Look at this.

MR. KLOPFENSTEIN: I know you do, your Honor.

THE COURT:Now, are there any checks in here?

MR. KLOPFENSTEIN: There are no checks in there."

The lower Court went on to further point out flaws caused by a purported, and controversial piece of evidence that was entered as unsigned, which had been a purported part of the Petitioner's divorce, some 12 years previously.[3]

"THE COURT:How are you going to get past the Dearest Mother letter? Well, all right. Let's not get into the facts now. By the way, was that document signed? I think its Exhibit 3.

MR. DEROY: There is a dispute, your Honor. We do not

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[3] It should be noted here that the opposing counsel herein acted as counsel for the various trusts during the Appellant's divorce case during 1983 and 1984 in Los Angeles, and to this end worked in conjunction with the Appellant's divorce counsel. Further to this point the Appellant's divorce counsel, Jerry Green, co-authored several documents with the opposing counsel herein in an effort to protect the Appellant's interest in the trust properties from being attacked by the Appellant's ex-wife in Appellants community property.

have a signed document, but we have evidence that there was a signed document."

The Honorable Edward M. Ross went further at a side bar, held off the record, to advise the Petitioner's counsel, in a tone loud enough for Petitioner to hear, that in his opinion the Petitioner didn't have a case and that the Petitioner should settle the case[4].

As a result Petitioner's counsel, at the lunch break in the cafeteria, warned Petitioner that if he did not settle his claims immediately against Respondents, that there would be serious reprisals from the Respondent's counsel and the judge, and further that he "would not receive anything and lose everything, and not receive any properties" and he had heard what Judge Ross said that he had no case.

Subsequently, during the afternoon session in Court on February 27, 1995, the Petitioner, after hearing for the first time the conflicted and convoluted terms of a settlement of the Petitioners claims against Respondents and after hearing Judge Ross ask him if he understood the terms of the settlement, accepted, on the Courts record the terms of a settlement of his claims

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[4] This controversial point was also admitted in the Respondent's Opening Brief in this appeal.

against Respondents.

Judge Ross then vacated the trial date in the action and stated that the Court show the settlement "as a conditional settlement" upon the Court's approval of the settlement on April 10, 1995. Respondent's counsel stated that he would prepare a dismissal of the action and requested that parties be excused from returning to Court if the dismissal was filed prior to April 10, 1995.

The Respondent's counsel was charged with the responsibility to prepare the Settlement documents. During this time the Petitioner was in Mexico and relied upon his counsel to review and discuss any documents with him.

During this time the Petitioner's counsel did receive several drafts of the documents which he faxed to the Petitioner. On these occasions the Petitioner direct objected to their content and outlined his objections, and further outline that he didn't want to settle the case.

To this end the Petitioner's counsel advised the Petitioner that he had to appear at the Respondent's office at the prescribed time to sign the documents or that judgment would be entered anyway.

At the meeting the next day the Petitioner again refused to sign the documents, however, at the insistence of his counsel as well as Respondent's counsel, he finally reluctantly signed the same without reading or understanding fully what he was

signing.

As a result of these actions the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel.

In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

Specifically in the complaints the Petitioner outlined several incidents showing their lack of diligence and professional negligence, to wit:

1. *Failure of Klopfenstein, and Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and Petitioner.*
2. *Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase documents which could have detailed taxes, sales and purchases payments made by*

respective family members on the disputed trust real and personal properties.

3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the 56 - 57 properties in question had been bought with monies that the petitioner had obtained either, personally or through loans, or by monies from our mother, Mrs. Eva Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based the entire case upon only six properties, despite the Petitioner's repeated requests and warning to include the entire 56-57 pieces of real property, and various personal property.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale of the properties, and massive personal property and clothes of both the Petitioner mother Eva

Sherman, and the Petitioner.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as his salaried bookkeeper.

6. Klopfenstein, and Polin failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented regarding estoppel under the theory of the Statue of Frauds.

7. Despite numerous requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To the Petitioner's detriment and against the Petitioner's repeated written and

oral requests, Klopfenstein and Polin filed to waive a jury trial in the case thereby depriving the Petitioner yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced the Petitioner and thereby creating unspeakable fear and turmoil and forcing the Petitioner into settling the case by repeatedly advising him that he had no case at all, and would lose all the properties and receive nothing if he did not settle immediately. They even evoked the courts admonition that he did not have a meritorious case at all that his case was only worth thirty minutes of consideration notwithstanding that the case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their authorized agents and their attorney's in fact. It seemed apparent to the Petitioner that

neither attorney had properly researched or prepared the case as the documents and testimony had been given to them by the petitioner and they had it in their files for almost one year.

Subsequent to the two complaints and after several inquiries by the Petitioner, including a renewal of his complaints on or about January 20, 1998, the State Bar of California noticed the Petitioner that they were not taking action as to Polin or Klopfenstien.[5]

As a result of this the Petitioner filed a Petition for Review with the California Supreme Court which summarily denied the Petition with reason. To this end the Petitioner then filed a request for reconsideration with the California Supreme Court which again was summarily denied.

It should also be noted that during this period of time the Petitioner also filed complaints with the California Real Estate Board, due to the underlying fraud committed by the original defendants, which has culminated into changes in the real estate procedures, to include but not limited to additional required courses for real estate

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[5] It should be noted by this Court, that at the time of this writing the complaint division of the California State Bar has been disbanded due to budgetary cuts at the State level.

brokers covering trust law, and the current requirement that all transfer documents on real property must now, besides having the signature of the transferor notarized, the parties thumb print must also appear on the document.

Furthermore, additional proposition are also now pending regarding the realignment of the judicial system in California, to wit: Proposition 220 which would give the individual counties the ability to abolish Municipal Court System and/or combine the Municipal Court System with that of the Superior Court System; and, Proposition 221 which would amend the California Constitution to give the Commission on Judicial Performance to power of court commissioners and referees.

REASONS FOR GRANTING THE WRIT

1. THIS COURT SHOULD REVIEW THE UNDERLYING CASE TO DETERMINE IF PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE CALIFORNIA STATE BAR AND CALIFORNIA SUPREME COURT'S REFUSAL TO GRANT REVIEW OF THE MATTER.

Due process is one of the most important rights guaranteed citizens of the United States, it was so important that it was one of the original rights outlined by our founding fathers, this being said this right was established and outlined in California's constitution from its onset in 1852, as well as our Federal constitution.

In fact it has been held that *"[a] fair hearing is a requisite of due process in both civil and criminal cases, and its denial is an act in excess of jurisdiction and reversible error per se."* *In re Hector R., 152 Cal. App. 3d 1146, 1153 (1984).*

Further to this point it has been held that *"[d]ue process demands impartial impartiality on the part of those who function in the judicial or quasi judicial capacities. Schweiker v. McClure, 456 U.S. 188, 102 S. Ct. 1665 (1982). See also Jackson Water Works, Inc. v. Public Utilities Com'n of State of Cal., 793 F2d 1090, certiorari denied 479 U.S. 1102, 107 S. Ct. 1334 (1986) (holding that due process clause guarantees aggrieved party opportunity to be heard and have its merits fairly decided; under due process, every party is entitled to impartial tribunal)*

In this case the Courts errors, actions and demeanor have lead to this point, when examined in their totality show that Petitioner's due process rights were indeed violated.

In the first instance, the Petitioner was abused by the forcefulness of two attorneys, who hid their neglect by pushing Petitioner into an involuntary settlement he did not want, and then when he attempted to utilize state procedures to set aside the coerced settlement he is almost summarily dismissed by the trial judge, after an unsuccessful attempt to recuse that judge.

To this end due to their actions the Petitioner filed two complaints with the California State Bar, which although seemingly investigated were never, despite the enormous amounts of evidence supplied, acted upon culminating into a formal refusal to do such after numerous letters and phone calls from the Petitioner to them inquiring as to the status.

Lastly the matter was summarily denied review by the California Supreme Court without even an explanation to which the Petitioner was advised was not required unless it became a "cause" which only occurs after a matter.

From the facts presented it can rightly be said that treatment received by Petitioner shocks the conscience and only serves to undermine the principals of "due process".

As it relates to this case the United States Court of Appeal for the 9th Circuit found that *"[d]ue process is denied where the procedure tends to shock the sense of fair play"*, *Howard v. United States, 372 F2d 294 (1967)*. This is certainly the case here and for that reason writ should be issued.

A. REVIEW OF THIS MATTER SHOULD HAVE BEEN GRANTED BY THE SUPREME COURT OF CALIFORNIA

Pursuant to the provisions of C.R.C. § 952(d) the Supreme Court has jurisdiction to review any order of the State Bar of California.

To this end the Petition must be filed

within 60 days of the date of the written notice.

In the instant matter in and that the notice was dated November 26, 1997 the instant Petition was timely.

In reviewing such cases this Court has found that the petitioning party has the burden to demonstrate that the respondent's recommendation is erroneous and unlawful. *See* *In re Trebilcock*, *30 Cal. 3d 312 (1981)*.

(a) THE ACTIONS OF THE PETITIONER'S PREVIOUS COUNSEL

In the instant matter as clearly set forth herein, with the evidence that was before the State Bar of California at the time of their decision not to discipline the attorney's in question, as well as latter before the California Supreme Court, the Petitioner feels that he more than met his burden to demonstrate that disciplinary actions should have been taken, and review of the same should have been granted.

As set forth herein as a result of the actions of his attorney's in their representation of his in *Sherman v. Sherman* the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel.

In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein

and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

Specifically in the complaints the Petitioner outlined several incidents showing their lack of diligence and professional negligence, to wit:

> *1. Failure of Klopfenstein, and Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and Petitioner.*
>
> *2. Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase documents which could have detailed taxes, sales and purchases payments made by respective family members on the disputed trust real and personal properties.*
>
> *3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the 56 - 57 properties in question had been bought with monies that the petitioner had obtained either,*

personally or through loans, or by monies from our mother, Mrs. Eva Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based the entire case upon only six properties, despite the Petitioner's repeated requests and warning to include the entire 56-57 pieces of real property, and various personal property.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale of the properties, and massive personal property and clothes of both the Petitioner mother Eva Sherman, and the Petitioner.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as

his salaried book keeper.

6. Klopfenstein, and Polin failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented regarding estoppel under the theory of the Statue of Frauds.

7. Despite numerous requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To the Petitioner's detriment and against the Petitioner's repeated written and oral requests, Klopfenstein and Polin filed to waive a jury trial in the case thereby depriving the Petitioner yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced the Petitioner and thereby

creating unspeakable fear and turmoil and forcing the Petitioner into settling the case by repeatedly advising him that he had no case at all, and would lose all the properties and receive nothing if he did not settle immediately. They even evoked the courts admonition that he did not have a meritorious case at all that his case was only worth thirty minutes of consideration notwithstanding that the case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their authorized agents and their attorney's in fact. It seemed apparent to the Petitioner that neither attorney had properly researched or prepared the case as the documents and testimony had been given to them by the petitioner and they had it in their files for almost one year.

In looking at the allegations it is evident that both Polin and Klopfenstein acted, not to the best interest of their client, but in such a way as to insulate

themselves from their own negligence as was pointed out to them by the trial court on or about February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

To this end, it has been held that the habitual disregard of an attorney of the interest of its client warrants disbarment[6], however, this was totally disregarded by the State Bar in their decision, and well as the Supreme Court of California in their refusal to grant review.

Furthermore, to insulate himself during the cursory investigation of the matter by the California State Bar, the subject attorneys relied upon the dicta of the judge in the state court action at the hearing on the Petitioner's motion to set aside the underlying Settlement Agreement.

To this end, at the hearing despite his previous admonishment of the Petitioner's prior counsel, on or about February 27, 1995, as to the various errors made in the entrance of evidence, and the lack of legal grounds for the recovery sought, Judge Ross in dicta made an unsolicited finding of fact that the two subject attorneys had done a fine job in the representation of the Petitioner and in making the settlement.

It should be noted that both of these

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[6] *Marcus v. State Bar*, 27 Cal. 3d 199 (1980).

attorneys joined in with the Defendants' in their opposition to motion.

To this end, at the time of the underlying motion the Petitioner had filed the subject complaints with the State Bar regarding the attorneys' conduct and was also in the process of filing a State Court action against them for malpractice resulting from gross professional negligence, incompetence, and fiduciary violations in their handling my case.

As set forth to the State Bar, the California Supreme Court, and as herein reiterated upon, if these two individuals had said anything else but what they did in their declarations it would have been career suicide for them in light of the circumstances which then surrounded them. Therefore their declarations were purely self-serving, incomplete, and were meant to mislead the court and should have been viewed that way, or at least with a great deal of suspicion.

To this end, however, beyond the suspicions nature of the circumstances behind these findings, these findings still should have no bearing for as set forth in *Rohe v. State Bar, 17 Cal. 2d 445 (1941)* the reason for a client's civil action against attorney and motive behind initiation of disciplinary proceedings were not controlling in determining whether an attorney should be disciplined where the facts disclosed independently indicated that an attorney was

subject to disciplinary action.

Hence, for the reasons as herein outlined, review of this denial of discipline as to Polin and Klopfenstein should be granted, to stem the ongoing flow of injustice.

(b) THE ACTIONS OF OPPOSING COUNSEL AGAINST THE PETITIONER

In the instant case the opposing party in the underlying lawsuit, who incidently is the brother of the Petitioner, was represented by attorney George DeRoy, California State Bar Number 22669.

In approximately 1984 the Petitioner herein divorced his former wife. As a part of the negotiations of that divorce during 1983 and 1984, issues arose regarding the Petitioner's former spouse's communal interest in the subject properties due to the community property laws in the State of California.

As part of the negotiations George DeRoy acted as counsel for the Sherman Family Trust as well as the Petitioner's brother, and assisted the Petitioner, and his divorce counsel in reaching an amicable resolution and settlement regarding said issues with Appellant's former spouse and her counsel.

During the course of this cooperative co-association several documents were prepared and co-authored by Appellant's divorce counsel, Jerry Green, and attorney George DeRoy in an effort to protect the

Trust property from possible seizure by the Petitioner's ex-wife as part of the divorce settlement.

To this end, several of these documents even though prepared were never filed in the Petitioner's divorce case as they were not needed. One such unsigned document, so entitled Memorandum of Understanding, surfaced during this litigation and to this end was utilized by the trial judge in his denial of the present §473 Motion as well as other pre-trial decisions.

It is unknown to this Petitioner how this particular document or other similar documents were obtained, or for that matter entered into evidence by the opposing counsel.

The Petitioner can only surmise that the opposing counsel's intricate and complete knowledge of the property issues concerning the Trusts issues which were raised in the Petitioner's divorce proceedings some twelve (12) years ago is what led the Respondent's counsel to these irrelevant and unfiled documents which he used to cloud the issues, quite successfully in the instant case.

The court has held that the representation by a trial counsel who has a conflict of interest denies the client a fair trial and is thus reversible per se. *See* *Hammett v. McIntyre* *114 Cal.App. 2d 148, 158 (1952)*. However, a more recent ruling indicates that there must be an affirmative showing that the conflict affected the

outcome of the proceeding to the prejudice of the complaining party. *See* *In Re: Sophia B.*, *203 Cal.App. 3d 1436, 1439 (1988)*.

Hence, as can be seen since the evident conflict of interest, directly impacted the Petitioner to his detriment.

Further to this point George DeRoy had a duty to disclose this conflict of interest which he did not.

This also was brought to the attention of the State Bar in numerous conversations had between the Petitioner and the State Bar, however on this issue the State Bar and the California Supreme Court chose not to act.

However, from the evidence presented this position is clearly erroneous and screams for review.

CONCLUSION

In light of the facts as herein presented this tribunal should review the underlying denial of the State Bar of California, and premised upon the facts as presented ad nauseam should grant a Review of this issue to prevent the egregious miscarriage of justice that has plagued not only the Petitioner but thousands of other just like him that have been exposed and subject to such abuse.

Dated: June 19, 1998 Respectfully Submitted,

By: Michael M Sherman

Michael M. Sherman

SUPREME COURT OF CALIFORNIA

JOHN C. ROSSI

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CLERK OF THE SUPREME COURT
March 27, 1998

Michael M. Sherman
1002 17th Street
Santa Monica, CA 90403

Re In Re the Accusation of Michael M. Sherman Against Certain Attorney(s)

Dear Mr. Sherman:

Pursuant to our telephone conversation, your request for reconsideration of an order denying your accusation cannot be considered because a summary denial of an accusation against an attorney is not a decision that determines a cause. While a summary denial is, in the generic sense of the word, a decision, it is not a decision of the Supreme Court as cited in article VI, section 14 of the Constitution, which specifies that "Decisions of the Supreme Court...that determine causes shall be in writing with reasons state. (Italics added.) A summary denial, a decision which does not determine a cause, requires neither a written opinion nor a statement of "reasons."

Returned is your original and copies of your request reconsideration.

Very truly yours,

\S\

ROBERT F. WANDRUFF
Court Administrator and Clerk
of the Supreme Court
By: Tommie Wright, Deputy Clerk

IN THE

SUPREME COURT OF CALIFORNIA

In re the Accusation of
MICHAEL M. SHERMAN
Against Certain
Attorney(s)

AFTER A DECISION BY THE STATE BAR
OF CALIFORNIA
STATE BAR NO.'S:
95-0-13637, 95-13636, and 95-24448

REQUEST FOR RECONSIDERATION OF ORDER DENYING REVIEW OF DECISION BY STATE BAR OF CALIFORNIA

MICHAEL M. SHERMAN
1002 17TH ST.
SANTA MONICA, CA 90403
(310) 453-2610

APP. 4

IN THE

SUPREME COURT OF CALIFORNIA

In re the Accusation of
MICHAEL M. SHERMAN
Against Certain
Attorney(s)

AFTER A DECISION BY THE STATE BAR
OF CALIFORNIA
STATE BAR NO.'S:
95-0-13637, 95-13636, and 95-24448

REQUEST FOR RECONSIDERATION OF
ORDER DENYING REVIEW OF DECISION
BY STATE BAR OF CALIFORNIA

COMES NOW, the Petitioner Michael M. Sherman, hereby moving this Court to reconsider its position on the summary denial in the instant matter to correct an egregious miscarriage of justice and to set forth the truth, and justice in the instant matter, and have it be acknowledged by the judicial system.

This motion is grounded is grounded upon the following, to wit:

1. That Petitioner herein contends that this Court's order, in the summary fashion it is presented, violates the spirit of Art. 6 § 14 of the California Constitution which requires that all decisions of the

Supreme Court which determine causes must be in writing with reasons stated. To this end, it is further the contention of the Petitioner that the importance and magnitude of the issues present for review justify "cause" requiring such a writing.

2. Furthermore, pursuant to C.R.C. § 954 the Supreme Court can review a decision that is not supported by the evidence. To this end it is the Petitioner's contention that with the multitude of evidence presented for review which establishes the egregious misconduct and miscarriage of justice of those parties complained upon that the State Bar's denial of discipline would scream for review. Therefore, this Petitioner respectfully requests that this Court reconsider its position and grant the review requested in the interest of justice, the truth, and Rule of Law, and to protect the interests of the people of the State of California.

Because of the enormous interest in cases like that of the Petitioner, and thousands of other similar cases in the State of California and throughout the United States, the instant matter, now unpublished and secretive, should be released for reporting for the usage and research of future generations. This is due to the critical constitutional due process issues which has been herein set forth.

Dated: March 10, 1998 /S/

Michael M. Sherman

In support of his Motion Petitioner would respectfully show this Court, to wit:

STATEMENT OF FACTS

The Petitioner herein, Michael M. Sherman ("hereinafter referred to as "Petitioner"), was the complainant in three complaints filed with the State Bar of California ("Respondent") as to three attorneys, George DeRoy, John F. Klopfenstein and Michael Polin. Two of the aforementioned represented him in the matter of *Sherman v. Sherman, LASC, Case No. BC085156*, while the third, although opposing counsel in this action, actually represented the Petitioner's trust interests in an inter-related matter.

The Petitioner, Michael M. Sherman ("hereinafter referred to as Petitioner") had previously filed a case on or about July 15, 1993.

In the underlying action, the Petitioner sought to enforce an oral trust in real and personal property; establish a constructive trust in real and personal property; partition real property; obtain an accounting; obtain declaratory relief and obtain damages for breach of fiduciary duty (the "Complaint").

The named defendants in the action were the Petitioner's brother, Jerome Sherman, and Mrs. Pat Perdue Plascencia.

The action arose out of Petitioner's and the underlying defendants respective ownership rights to some 56-57 real estate trust properties in California and New York,

and various personal trust property, including, trust supplies, equipment, vehicles, bank and security box vault items of parents Eva and Nathan Sherman, and Petitioner, all certifiable valued in excess of Fifteen Million Five Hundred Thousand Dollars, ($15,500,000.00), and Petitioner's and defendants' respective rights to the income and benefits from the 56-57 real estate trust properties and various personal trust property, the trust in existence for over sixty (60) years in California and New York, which was used to Jerome Sherman's and Pat Plascencia's and her family's own benefit.

On or about October 7, 1994 the Petitioner retained the service of attorney John Klopfenstein (State Bar No. 164905) to represent him in this matter.

On or about January 13, 1995 the Petitioner also retained the services of Michael R. Polin (State Bar No. 130463) to replace Klopfenstein, as his attorney of record; however Polin, was, as he latter informed the Petitioner after the Petitioner had retained him, due to his schedule only able to review certain documents, advise and supervise Klopfenstein on the Petitioner's cases, and prepare written opinions and procedural assistance and settlement strategies on my case.

During the litigation the Petitioner felt that his attorneys grossly mishandled the administration of the case.

The litigation was finally set for Final Settlement Conference on February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

At the hearing the trial court greatly admonished the Petitioner's attorney's for their non-compliance with applicable rules of court, and further pointed out their lack of trial preparation.

The lower Court went on to further point out flaws caused by a purported, and controversial piece of evidence that was entered as unsigned, which had been a purported part of the Petitioner's divorce, some 12 years previously.[1]

As a result Petitioner's counsels, during a break, warned Petitioner that if he did not settle his claims immediately against Respondents, that there would be serious reprisals from the Respondent's counsel and the judge, and further that he "would not

---

[1] It should be noted here that the opposing counsel herein acted as counsel for the various trusts during the Appellant's divorce case during 1983 and 1984 in Los Angeles, and to this end worked in conjunction with the Appellant's divorce counsel. Further to this point the Appellant's divorce counsel, Jerry Green, co-authored several documents with the opposing counsel herein in an effort to protect the Appellant's interest in the trust properties from being attacked by the Appellant's ex-wife in Appellants community property.

receive anything and lose everything, and not receive any properties" and he had heard what Judge Ross said that he had no case.

Subsequently, during the afternoon session in Court on February 27, 1995, the Petitioner, after hearing for the first time the, complicated, conflicting and convoluted verbal terms only of a settlement of the Petitioners claims against Respondents and after hearing Judge Ross ask him if he accepted the terms of the settlement, accepted, on the Courts record the terms of a settlement of his claims against the Defendants. Despite his confusion and lack of understanding regarding the settlement agreement, and frustrated by what he had been told by DeRoy and his own attorneys regarding the need for settlement the petitioner accepted the settlement without truly understanding the consequences of his actions.

As a result of these actions the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel, which at this point are pending internal review with the office of the Chief Trial Counsel for Enforcement of the California State Bar.

In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit

many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

Subsequent to the three complaints and after several inquiries by the Petitioner, including a renewal of his complaints on or about January 20, 1997, the State Bar of California noticed the Petitioner that they were not taking action.

As a result the Petitioner herein filed an accusation with this Court seeking review of the State Bar's denial of action, which was recently summarily denied.

The petitioner however, seeks a reconsideration of this as in this matter the Petitioner has been estopped from bringing forth the truth in this matter by no less than twenty nine (29) denials, eleven (11) of which were summary denials from both the Court of Appeals, this Court and the lower court as well. *See Exhibits 1 - 10 hereto attached.* Furthermore, these denials have been made in such a way as to be unreported, therefore this matter could never be researched. The Petitioner feels that it is important, not only in this matter, but to the thousands of other similar cases in the various courts in California and throughout the Unites State, and to the people of the state of California that these transcretions be put in check.

ARGUMENT

I.

THE ORDER RECEIVED VIOLATES THE SPIRIT OF CALIFORNIA CONSTITUTION ART. 6 § 14

In pertinent part Article 6 § 14 of the California Constitution states that *"[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."*

As applied in the instant case it is Petitioner's contention that the case before this Tribunal presents an egregious miscarriage of justice that it establishes "cause" as that term is used in Article 6 § 14 of the California Constitution.

In the instant matter this Court was asked to review the State Bar of California's decision for in its context and application the Petitioner felt, and still feels, that his constitutional rights to "due process", and Civil and Human rights had been severely violated, not only once but twice, and that the actions of those complained about, which were more than amply demonstrated must be disciplined.

The brevity of the situation cries out injustice, which has now only been seemingly bolstered by this Court's summary denial of review of such an important and critical issue.

While Petitioner realizes that this tribunal's decision to review a case is purely discretionary, and not required by the Constitution, he does not feel that such should have been done through a mere four

word denial, without legal explanation or justification.

To this end, in reviewing the case law as it applies to the necessity of a writing, and the judicial interpretation of "cause", it appears that this Court, as well as the lower Court of Appeal, has previously interpreted "determination of cause" in various applications by finding that the term did not apply to Writs of Mandate and Habeas Corpus matters, as in that application the actual decision on the writ did not constitute a determination of cause, and that only after the issuance of the alternative writ did the matter become "cause".[2] However, from a cursory review of the cases regarding judicial interpretation of what constitutes "cause" is generally silent as to the Supreme Court's responsibility as to a decision regarding a review.

Therefore, Petitioner contends to this Court that given the brevity and seriousness of the issues asked to be reviewed, and the long reaching effects of the position of the State Bar of California, in their condoning the actions of Petitioner's attorneys and opposing counsel, as it applies to the citizens of this state and their individual freedoms regarding access to the Court system

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[2] *See* People v. Rojas, *118 Cal. App 3d 278 (1981);* In re Mazoros, *76 Cal App. 3d 50 (1977).*

and their treatment therein, the decision of this Court regarding its acceptance or denial of review constitutes a "determination of cause" requiring a written decision setting forth this tribunal's reasons for denial.

II.

THE SUFFICIENCY OF THE EVIDENCE PRESENTED MORE THAN AMPLY DEMONSTRATED THE CULPABILITY OF THE ATTORNEYS COMPLAINED UPON AND THEREFORE ANY DENIAL OF DISCIPLINE SHOULD BE REVIEWED IN THE INTEREST OF JUSTICE

In the instant matter as clearly set forth herein, with the evidence that was before the State Bar of California at the time of their decision not to discipline the attorneys in question such is plainly the case.

As set forth herein as a result of the actions of his attorneys' in the case *Sherman v. Sherman* the Petitioner filed complaints with the California State Bar, on these occasions with numerous follow up letters and telephone conversations with the State Bar efforts, as to his previous counsel. It should be noted by this Court that in those Complaints the Petitioner went to great lengths, through the production of approximately 1600 pages of evidence to set forth through evidence the actions of the underlying attorneys, however, to no avail.

In those complaints the Petitioner plainly outlined the facts supporting his

complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

In reviewing such cases this Court has found that the petitioning party has the burden to demonstrate that the respondent's recommendation is erroneous and unlawful. *See* *In re Trebilcock*, *30 Cal. 3d 312 (1981)*.

A.

THE ACTIONS OF THE PETITIONER'S PREVIOUS COUNSEL

In the instant matter as clearly set forth herein, with the evidence that was before the State Bar of California at the time of their decision not to discipline the attorneys in question such is plainly the case.

In looking at the allegations, as previously set forth and herein reiterated upon, it is evident that both Polin and Klopfenstein acted, not to the best interest of their client, but in such a way as to insulate themselves from their own negligence as was pointed out to them by the trial court on or about February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

To this end it has been held that the habitual disregard of an attorney of the interest of its client warrants disbarment

however, this was totally disregarded by the State Bar in their decision.

In their investigation the State Bar herein advised the Petitioner that his remedy was in the civil arena, which the petitioner herein attempted, however, to no avail for the subject attorneys relied upon the dicta of the trial judge in the underlying state court action at the hearing on the Petitioner's motion to set aside the underlying Settlement Agreement, to assist them to defeat the action[3].

To this end, however, beyond the suspicions nature of the circumstances behind these findings, these findings, and the situation with any underlying civil action, should have no bearing for as set forth in *Rohe v. State Bar*, *17 Cal. 2d 445 (1941)* the reason for a client's civil action against attorney and motive behind initiation of disciplinary proceedings were not controlling in determining whether an attorney should be disciplined where the *facts disclosed independently indicate that an attorney was subject to disciplinary action*. **Emphasis**

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[3] It should be noted that the findings relied upon by the attorneys stemmed from the unsolicited findings of the trial court judge where after his admonishment of them for poor case preparation, the trial court judge latter at a hearing to overturn the settlement premised upon coercion found that the underlying attorneys "did a fine job" in the underlying case.

added

Hence, for the reasons as herein outlined, review of this denial of discipline as to Polin, Klopfenstein, and DeRoy should be granted.

B.

THE ACTIONS OF OPPOSING COUNSEL AGAINST THE PETITIONER

In the instant case the opposing party in the underlying lawsuit, who incidently is the brother of the Petitioner, was represented by attorney George DeRoy, State Bar Number 22669.

As previously set forth, and herein reiterated upon, in approximately 1984 the Petitioner herein divorced his former wife. As a part of the negotiations of that divorce during 1983 and 1984, issues arose regarding the Petitioner's former spouse's communal interest in the subject properties due to the community property laws in the State of California.

To this end, as part of the negotiations George DeRoy acted as counsel for the Sherman Family Trust as well as the Petitioner's brother, and assisted the Petitioner, and his divorce counsel in reaching an amicable resolution and settlement regarding said issues with Appellant's former spouse and her counsel.

During the course of this cooperative co-association several documents were prepared and co-authored by Appellant's divorce counsel, Jerry Green, and attorney

George DeRoy in an effort to protect the Trust property from possible seizure by the Petitioner's ex-wife as part of the divorce settlement.

To this end, several of these documents even though prepared were never filed in the Petitioner's divorce case as they were not needed. One such unsigned document, so entitled Memorandum of Understanding, surfaced during this litigation and to this end was utilized by the trial judge in his denial of the present §473 Motion as well as other pre-trial decisions.

It is unknown to this Petitioner how this particular document or other similar documents were obtained, or for that matter entered into evidence by the opposing counsel.

The Petitioner can only surmise that the opposing counsel's intricate and complete knowledge of the property issues concerning the Trusts issues which were raised in the Petitioner's divorce proceedings some twelve (12) years ago is what led the Respondent's counsel to these irrelevant and unfiled documents which he used to cloud the issues, quite successfully in the instant case.

The Petitioner is informed, believes and thereon alleges that given the evidence that George DeRoy was the intellectual author behind the instant circumstances and that he used his detailed knowledge of the entire Sherman Family Trust to orchestrate the Petitioner's demise in his case. Furthermore,

the Petitioner further alleges that this was in conjunction with his own attorneys for during Petitioner's attempt to civil sue his previous attorneys George DeRoy joined with them in their own defense, evidently in an effort to quash the Petitioner's bringing to light the truth and totality of the situation.

Hence, as can be seen since the evident conflict of interest, directly impacted the Petitioner to his detriment.

Further to this point George DeRoy had a duty to disclose this conflict of interest which he did not.

This also was brought to the attention of the State Bar in numerous conversations had between the Petitioner and the State Bar, however on this issue the State Bar has also chosen not to act.

However, from the evidence presented this position is clearly erroneous and cries out for review.

C.

REASONS FOR RECONSIDERATION

In the instant matter it cannot be said enough that Petitioner has sought all of his remedies in an effort to obtain a fair review of his situation. Despite his attempts at setting for the truth behind his demise he has met with nothing but denials most of which were deemed summarily, inclusive of the most recent denial by this Court on or about February 25, 1998.

The Petitioner was under the impression

that the State Bar's duty was to oversee the matters relating to the ethical actions of their members.

To this end, the Petitioner has seen disciplinary actions initiated by the State Bar for far less actions than those orchestrated against him; yet in this action, despite the massive and unimpeachable evidence provided, no action has been taken so far.

The Petitioner seeks nothing more than truth and justice in his plight, and therefore, implores this Court review of the State Bar's decision in not initiating disciplinary actions. Not only as a rectification of the situation that he was involved in, but to protect other unsuspecting lay people who go to attorneys seeking protection and adequate representation.

Lastly numerous articles have been written in various periodicals, and movies i.e. the "Rainmaker", regarding the present state of our judicial system, where due to the enormous size of the Court system many transcretions go unchecked. This should not be allowed to continue, especially when the facts cry out for truth and justice as these do.

For all the reasons set forth herein, it is respectfully requested that this case be reviewed with a finding in favor of discipline.

CONCLUSION

In light of the facts as herein presented this tribunal should review the underlying denial of the State Bar of California and premised upon the facts as presented ad nauseam find disciplinary actio is warranted against the attorney's named herein.

Dated: March 10, 1998

Respectfully Submitted,

By: /S/

Michael M. Sherman

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

_____.

On March 12, 1998 I served the following document(s) described as PETITION FOR REVIEW on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

GEORGE DeROY, ESQ.
HOCHMAN, SALKIN & DeROY
9150 WILSHIRE BLVD., STE 300
BEVERLY HILLS, CA 90212-3414

THE STATE BAR OF CALIFORNIA
1149 S. HILL ST.
LOS ANGELES, CA 90015

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 1998, at Los Angeles, California.

_____

APP. 22

S067608

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
FEB 25, 1998
ROBERT WANDRUFF CLERK

In re the Accusation of MICHAEL M. SHERMAN against Certain Attorneys)

Petition DENIED

GEORGE
Chief Justice

IN THE
SUPREME COURT OF CALIFORNIA

MICHAEL M. SHERMAN,
Petitioner,
vs.
STATE BAR OF CALIFORNIA,
Respondents.

AFTER A DECISION BY THE STATE BAR
OF CALIFORNIA
STATE BAR NO.'S:
95-0-13637, 95-13636, and 95-24448

ACCUSATION AGAINST ATTORNEYS BY MICHAEL SHERMAN

MICHAEL M. SHERMAN
1002 17TH ST.
SANTA MONICA, CA 90403
(310) 453-2610

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IN THE
SUPREME COURT OF CALIFORNIA

MICHAEL M. SHERMAN,
Petitioner,
vs.
STATE BAR OF CALIFORNIA,
Respondents.

AFTER A DECISION BY THE STATE BAR
OF CALIFORNIA
STATE BAR NO.'S:
95-0-13637, 95-13636, and 95-24448

ACCUSATION AGAINST ATTORNEYS
BY MICHAEL SHERMAN

INTRODUCTION

This action stems from a denial of the California State Bar to act upon the Petitioner's two complaints filed against his former attorneys.

In the instant case as set forth, the resulting decisions violate the very realms of jurisprudence, for here we have a case where a party's due process rights were initially violated by his previous attorneys who through threats and intimidation forced him to settle a case he did not want to settle, and then in the utilization of the avenue to correct this, he again had his due process right violated by being unable to achieve a hearing before a fair tribunal.

PETITION FOR REVIEW

By this verified Petition, the Petitioner, Michael M. Sherman, alleges, to wit:

1. The Petitioner herein, Michael M. Sherman ("hereinafter referred to as "Petitioner"), was the complainant in two complaints filed with the State Bar of California ("Respondent") as to two attorneys that represented him in the matter of *Sherman v. Sherman, LASC, Case No. BC085156.*

2. The Petitioner, Michael M. Sherman ("hereinafter referred to as Petitioner") had previously filed a case on or about July 15, 1993. [App Vol I PG 13] In the underlying action, the Petitioner sought to enforce an oral trust in real and personal property; establish a constructive trust in real and personal property; partition real property; obtain an accounting; obtain declaratory relief and obtain damages for breach of fiduciary duty (the "Complaint"). [App Vol I PG 13].

3. The named defendants in the action were the Petitioner's brother, Jerome Sherman and Mrs. Pat Perdue Plascencia. [App Vol I PG 13]

4. The action arose out of Petitioner's and Respondent's respective ownership rights to some 56-57 real estate trust properties in California and New York, and various personal trust property, including, trust supplies, equipment, vehicles, bank and security box vault items

of parents Eva and Nathan Sherman, and Petitioner, all total valued in excess of Fifteen Million Five Hundred Thousand Dollars, ($15,500,000.00), and Petitioner's and defendants respective rights to the income and benefits from the 56-57 real estate trust properties and various personal trust property, the trust in existence for over sixty (60) years in California and New York, which was used to Respondent and Co-Respondent's benefit. [App Vol I pg 13]

6. On or about October 7, 1994 the Petitioner retained the service of attorney John Klopfenstein (State Bar No. 164905) to represent him in this matter.[App Vol I page 14]

7. On or about January 13, 1995 the Petitioner also retained the services of Michael R. Polin (State Bar No. 130463) to replace Klopfenstein, as his attorney of record; however Polin, was, as he latter informed the Petitioner after the Petitioner had retained him, due to his schedule only able to review certain documents, advise and supervise Klopfenstein on the Petitioner's cases, and prepare written opinions and procedural assistance and settlement strategies on my case. [App Vol I page 14]

8. During the litigation the Petitioner felt that his attorneys grossly mishandled the administration of the case. [App: Vol I page 14]

9. The litigation was finally set for Final Settlement Conference on February 27,

1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

10. The Honorable Edward M. Ross in response to the Petitioner's attorney's estimation of trial length being 5 to 10 days demonstrated his own opinion of the case by surmising, to wit:

"THE COURT: All right. What's your time estimate?

MR. KLOPFENSTEIN: I think five to ten days, your Honor, is a realistic time estimate.

THE COURT: I don't.

MR. KLOPFENSTEIN: I know you don't.

THE COURT: I don't. I think maybe a half hour is a more realistic time estimate. You know, there is an old saying Mr. Klopfenstein, something about if you can't dazzle them with brilliance, baffle them with bull. You have given me these exhibits here with a thousand pages. You must have dug up every single scrap of paper you could find to put in this exhibit book.

MR. KLOPFENSTEIN: I have some additional ones, your Honor.

THE COURT: No, you don't. No, you don't. If they are not in the exhibit book that's been submitted, you don't have any.. ."

[App Vol VII page 1138]

10. Furthermore the lower Court went

on to point out the obvious discrepancies with the case, caused by the negligence of the Petitioner's counsel, to wit:

> *THE COURT: . . . But what you have got, let me tell you what you have got. First of all, I can't see any way that I am not going to sustain the objections that Mr. Deroy has filed for Exhibits 1 through 38 and 45, I think it was.*
>
> *You have got what appears to be an insolvable problem with the Probate Code on the Statute of Frauds. You can't have an oral trust. I mean, its not my ruling; its the legislature that says you can't have an oral trust.*
>
> *There no question, there is no question but that Jerome put a lot of property in Michael's name over the course of the years. That's a gimme. But you've given me roughly 1,000 pages, 99 percent of which have absolutely no relevance to any issue here. A bunch of deeds - - I mean, it's interesting to see how they did things in New York in the twenties and thirties and see all those old deeds. And you have got some lot book descriptions, you've got all kinds of things in there. But, you know, an awful lot of chaff but no*

wheat.

What you do have is a few properties where, if, in fact, you have a legitimate constructive trust, you can pursue that.

MR KLOPFENSTEIN: Well, your Honor, we have six properties[4] that are clearly. . . that we have six properties that both Jerome and Michael Sherman are tenants in common on, that at this time or at the time of the trial, we would ask for dec relief on that, your Honor, and an accounting.

[App Vol VII page 1139]

11. The lower Court went on to further point out problems caused by the Petitioner attorneys' lack of proper trial preparation, to wit:

"THE COURT: . . . And if you can show how a constructive trust can apply, if you can show how Michael, notwithstanding the 1983 letters, notwithstanding the 1983 document that evidently his attorney at that time prepared saying that even though we hold these properties in our joint names they were for my benefit and

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[4] It is interesting here to note that the original complaint involved approximately 57 properties.

they all belong to Jerome; then if you can proof [sic] that, in fact, Michael put something into it that's fine. Certainly happy to hear that, as a constructive trust.

MR KLOPFENSTEIN: Okay. Well we think we can, your Honor.

THE COURT: You actually have evidence that Michael put monies into these properties?

MR. KLOPFENSTEIN: Yes.

THE COURT: All right. Where is the evidence?

MR. KLOPFENSTEIN: We have checks, your Honor, we - -

THE COURT: No, you don't have checks. You may think, counsel, that our court rules are just for filing, but look at Rule 7.9. Even if you ignore my final status conference order, look at Rule 7.9(D), which requires you to submit the documentary evidence in the exhibits. You are not going to bring checks in now that you haven't submitted. I've looked through these exhibits. I take the time to look through them, even the thousand pages or so. Look at this.

MR. KLOPFENSTEIN: I know you do, your Honor.

THE COURT: Now, are there any

checks in here?

MR. KLOPFENSTEIN: There are no checks in there."

[App Vol VII 1139 - 1140]

The lower Court went on to further point out flaws caused by a purported, and controversial piece of evidence that was entered as unsigned, which had been a purported part of the Petitioner's divorce, some 12 years previously.

"THE COURT: How are you going to get past the Dearest Mother letter? Well, all right. Let's not get into the facts now. By the way, was that document signed? I think its Exhibit 3.

MR. DEROY: There is a dispute, your Honor. We do not have a signed document, but we have evidence that there was a signed document."

12. The Honorable Edward M. Ross went further at a side bar, held off the record, to advise the Petitioner's counsel, in a tone loud enough for Petitioner to hear, that in his opinion the Petitioner didn't have a case and that the Petitioner should settle the case[5].

13. As a result Petitioner's counsel, at the lunch break in the cafeteria, warned

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[5] This controversial point was also admitted in the Respondent's Opening Brief in this appeal.

Petitioner that if he did not settle his claims immediately against Respondents, that there would be serious reprisals from the Respondent's counsel and the judge, and further that he "would not receive anything and lose everything, and not receive any properties" and he had heard what Judge Ross said that he had no case. [CT: Vol II, pg 000179, ln 15 - 22]

14. Subsequently, during the afternoon session in Court on February 27, 1995, the Petitioner, after hearing for the first time the conflicted and convoluted terms of a settlement of the Petitioners claims against Respondents and after hearing Judge Ross ask him if he understood the terms of the settlement, accepted, on the Courts record the terms of a settlement of his claims against Respondents. [App Vol VII]

15. Judge Ross then vacated the trial date in the action and stated that the Court show the settlement "as a conditional settlement" upon the Court's approval of the settlement on April 10, 1995. Respondent's counsel stated that he would prepare a dismissal of the action and requested that parties be excused from returning to Court if the dismissal was filed prior to April 10, 1995. [App Vol I]

16. The Respondent's counsel was charged with the responsibility to prepare the Settlement documents. During this time the Petitioner was in Mexico and relied upon his counsel to review and discuss any

documents with him.

17. During this time the Petitioner's counsel did receive several drafts of the documents which he faxed to the Petitioner. On these occasions the Petitioner direct objected to their content and outlined his objections, and further outline that he didn't want to settle the case.

18. To this end the Petitioner's counsel advised the Petitioner that he had to appear at the Respondent's office at the prescribed time to sign the documents or that judgment would be entered anyway.

19. At the meeting the next day the Petitioner again refused to sign the documents, however, at the insistence of his counsel as well as Respondent's counsel, he finally reluctantly signed the same without reading or understanding fully what he was signing.

20. As a result of these actions the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel, which at this point are pending internal review with the office of the Chief Trial Counsel for Enforcement of the California State Bar. [App: Vol I - VII]

21. In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience

in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

22. Specifically in the complaints the Petitioner outlined several incidents showing their lack of diligence and professional negligence, to wit:

1. Failure of Klopfenstein, and Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and Petitioner.

2. Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase documents which could have detailed taxes, sales and purchases payments made by respective family members on the disputed trust real and personal properties.

3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the 56 - 57 properties in question had been bought with monies that the petitioner had obtained either, personally or through loans, or by monies from our mother, Mrs. Eva

Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based the entire case upon only six properties, despite the Petitioner's repeated requests and warning to include the entire 56-57 pieces of real property, and various personal property.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale of the properties, and massive personal property and clothes of both the Petitioner mother Eva Sherman, and the Petitioner.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as his salaried bookkeeper.

6. Klopfenstein, and Polin

failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented regarding estoppel under the theory of the Statue of Frauds.

7. Despite numerous requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To the Petitioner's detriment and against the Petitioner's repeated written and oral requests, Klopfenstein and Polin filed to waive a jury trial in the case thereby depriving the Petitioner yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced the Petitioner and thereby creating unspeakable fear and turmoil and forcing the Petitioner

into settling the case by repeatedly advising him that he had no case at all, and would lose all the properties and receive nothing if he did not settle immediately. They even evoked the courts admonition that he did not have a meritorious case at all that his case was only worth thirty minutes of consideration notwithstanding that the case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their authorized agents and their attorney's in fact. It seemed apparent to the Petitioner that neither attorney had properly researched or prepared the case as the documents and testimony had been given to them by the petitioner and they had it in their files for almost one year.

23. Subsequent to the two complaints and after several inquiries by the Petitioner, including a renewal of his complaints on or about January 20, 1997, the State Bar of California noticed the Petitioner that they were not taking action.

[App VOL I - VIII]

24. It is imperative in light of the actions of the Petitioner's former attorneys that this matter be reviewed as to their actions so that the appropriate actions be brought.

Volumes I through VIII are hereby incorporated into this petition as though fully set forth.

PRAYER

WHEREFORE, Petitioner prays that this Court:

1. This Court grant a review of the State Bar of California's denial.

2. Grant such other relief as may be just and proper.

Dated:

Respectfully submitted

\S\

Michael Sherman

VERIFICATION

State of California, County of Los Angeles

I, the undersigned say:

That I am the Petitioner in the above entitled case.

I have read the foregoing written PETITION FOR REVIEW and know its contents, as well as those set forth in the attached Memorandum of Points and Authorities.

The same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 23, 1998, at Los Angeles, California.

\s\

Michael M. Sherman

MEMORANDUM OF POINTS AND AUTHORITIES

In support of the PETITION FOR REVIEW submits the following Memorandum of Points and Authorities:

COMBINED STATEMENT OF FACTS AND STATEMENT OF CASE

The Petitioner herein, Michael M. Sherman ("hereinafter referred to as "Petitioner"), was the complainant in two complaints filed with the State Bar of California ("Respondent") as to two attorneys that represented him in the matter of *Sherman v. Sherman, LASC, Case No. BC085156.*

The Petitioner, Michael M. Sherman ("hereinafter referred to as Petitioner") had previously filed a case on or about July 15, 1993. In the underlying action, the Petitioner sought to enforce an oral trust in real and personal property; establish a constructive trust in real and personal property; partition real property; obtain an accounting; obtain declaratory relief and obtain damages for breach of fiduciary duty (the "Complaint").

The named defendants in the action were the Petitioner's brother, Jerome Sherman, and Mrs. Pat Perdue Plascencia.

The action arose out of Petitioner's and Respondent's respective ownership rights to some 56-57 real estate trust properties in California and New York, and various personal trust property, including, trust supplies, equipment, vehicles, bank and security box vault items of parents Eva and Nathan

Sherman, and Petitioner, all total valued in excess of Fifteen Million Five Hundred Thousand Dollars, ($15,500,000.00), and Petitioner's and defendants respective rights to the income and benefits from the 56-57 real estate trust properties and various personal trust property, the trust in existence for over sixty (60) years in California and New York, which was used to Respondent and Co-Respondent's benefit.

On or about October 7, 1994 the Petitioner retained the service of attorney John Klopfenstein (State Bar No. 164905) to represent him in this matter.

On or about January 13, 1995 the Petitioner also retained the services of Michael R. Polin (State Bar No. 130463) to replace Klopfenstein, as his attorney of record; however Polin, was, as he latter informed the Petitioner after the Petitioner had retained him, due to his schedule only able to review certain documents, advise and supervise Klopfenstein on the Petitioner's cases, and prepare written opinions and procedural assistance and settlement strategies on my case.

During the litigation the Petitioner felt that his attorneys grossly mishandled the administration of the case.

The litigation was finally set for Final Settlement Conference on February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

The Honorable Edward M. Ross in response to the Petitioner's attorney's estimation of trial length being 5 to 10 days demonstrated his own opinion of the case by surmising, to wit:

"THE COURT: All right. What's your time estimate?

MR. KLOPFENSTEIN: I think five to ten days, your Honor, is a realistic time estimate.

THE COURT: I don't.

MR. KLOPFENSTEIN: I know you don't.

THE COURT: I don't. I think maybe a half hour is a more realistic time estimate. You know, there is an old saying Mr. Klopfenstein, something about if you can't dazzle them with brilliance, baffle them with bull.

You have given me these exhibits here with a thousand pages. You must have dug up every single scrap of paper you could find to put in this exhibit book.

MR. KLOPFENSTEIN: I have some additional ones, your Honor.

THE COURT: No, you don't. No, you don't. If they are not in the exhibit book that's been submitted, you don't have any. . ."

10. Furthermore the lower Court went on to point out the obvious discrepancies with the case, caused by the negligence of

the Petitioner's counsel, to wit:

THE COURT: . . . But what you have got, let me tell you what you have got. First of all, I can't see any way that I am not going to sustain the objections that Mr. Deroy has filed for Exhibits 1 through 38 and 45, I think it was.

You have got what appears to be an insolvable problem with the Probate Code on the Statute of Frauds. You can't have an oral trust. I mean, its not my ruling; its the legislature that says you can't have an oral trust.

There no question, there is no question but that Jerome put a lot of property in Michael's name over the course of the years. That's a gimme. But you've given me roughly 1,000 pages, 99 percent of which have absolutely no relevance to any issue here. A bunch of deeds - - I mean, it's interesting to see how they did things in New York in the twenties and thirties and see all those old deeds. And you have got some lot book descriptions, you've got all kinds of things in there. But, you know, an awful lot of chaff but no wheat.

What you do have is a few

properties where, if, in fact, you have a legitimate constructive trust, you can pursue that.

MR KLOPFENSTEIN: Well, your Honor, we have six properties[6] *that are clearly. . . that we have six properties that both Jerome and Michael Sherman are tenants in common on, that at this time or at the time of the trial, we would ask for dec relief on that, your Honor, and an accounting.*

11. The lower Court went on to further point out problems caused by the Petitioner attorneys' lack of proper trial preparation, to wit:

"THE COURT: . . . And if you can show how a constructive trust can apply, if you can show how Michael, notwithstanding the 1983 letters, notwithstanding the 1983 document[7] *that evidently his*

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[6] It is interesting here to note that the original complaint involved approximately 5 properties.

[7] The 1983 document referred to by the Court as will be later addressed herein refer to purported documents, one of which was unsigned, which were purportedly used in th Appellant's divorce some 12 - 13 years previous, in which the opposing counsel was semi-involved representing the Appellant's and Respondent's trust interests.

attorney at that time prepared saying that even though we hold these properties in our joint names they were for my benefit and they all belong to Jerome; then if you can proof [sic] that, in fact, Michael put something into it that's fine. Certainly happy to hear that, as a constructive trust.

MR KLOPFENSTEIN: Okay. Well we think we can, your Honor.

THE COURT: You actually have evidence that Michael put monies into these properties?

MR. KLOPFENSTEIN: Yes.

THE COURT: All right. Where is the evidence?

MR. KLOPFENSTEIN: We have checks, your Honor, we - -

THE COURT: No, you don't have checks. You may think, counsel, that our court rules are just for filing, but look at Rule 7.9. Even if you ignore my final status conference order, look at Rule 7.9(D), which requires you to submit the documentary evidence in the exhibits. You are not going to bring checks in now that you haven't submitted. I've looked through these exhibits. I take the time to look through them, even the thousand pages or so. Look at

this.

MR. KLOPFENSTEIN: I know you do, your Honor.

THE COURT: Now, are there any checks in here?

MR. KLOPFENSTEIN: There are no checks in there."

[RT: 0021, LN 28 through 0022, LN 28]

The lower Court went on to further point out flaws caused by a purported, and controversial piece of evidence that was entered as unsigned, which had been a purported part of the Petitioner's divorce, some 12 years previously.[8]

"THE COURT: How are you going to get past the Dearest Mother letter? Well, all right. Let's not get into the facts now. By the way, was that document signed? I think its Exhibit 3.

MR. DEROY: There is a dispute, your Honor. We do not have a signed document, but we

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[8] It should be noted here that the opposing counsel herein acted as counsel for the various trusts during the Appellant's divorc case during 1983 and 1984 in Los Angeles, a to this end worked in conjunction with the Appellant's divorce counsel. Further to this point the Appellant's divorce counsel, Jerr Green, co-authored several documents with t opposing counsel herein in an effort to protect the Appellant's interest in the trus properties from being attacked by the Appellant's ex-wife in Appellants community property.

have evidence that there was a signed document." [RT: 0022, 0019 - 26]

The Honorable Edward M. Ross went further at a side bar, held off the record, to advise the Petitioner's counsel, in a tone loud enough for Petitioner to hear, that in his opinion the Petitioner didn't have a case and that the Petitioner should settle the case[9]. As a result Petitioner's counsel, at the lunch break in the cafeteria, warned Petitioner that if he did not settle his claims immediately against Respondents, that there would be serious reprisals from the Respondent's counsel and the judge, and further that he "would not receive anything and lose everything, and not receive any properties" and he had heard what Judge Ross said that he had no case. [CT: Vol II, pg 000179, ln 15 - 22]

Subsequently, during the afternoon session in Court on February 27, 1995, the Petitioner, after hearing for the first time the conflicted and convoluted terms of a settlement of the Petitioners claims against Respondents and after hearing Judge Ross ask him if he understood the terms of the settlement, accepted, on the Courts record the terms of a settlement of his claims

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[9] This controversial point was also admitted in the Respondent's Opening Brief in this appeal.

against Respondents.

Judge Ross then vacated the trial date in the action and stated that the Court show the settlement "as a conditional settlement" upon the Court's approval of the settlement on April 10, 1995. Respondent's counsel stated that he would prepare a dismissal of the action and requested that parties be excused from returning to Court if the dismissal was filed prior to April 10, 1995.

The Respondent's counsel was charged with the responsibility to prepare the Settlement documents. During this time the Petitioner was in Mexico and relied upon his counsel to review and discuss any documents with him.

During this time the Petitioner's counsel did receive several drafts of the documents which he faxed to the Petitioner. On these occasions the Petitioner direct objected to their content and outlined his objections, and further outline that he didn't want to settle the case.

To this end the Petitioner's counsel advised the Petitioner that he had to appear at the Respondent's office at the prescribed time to sign the documents or that judgment would be entered anyway.

At the meeting the next day the Petitioner again refused to sign the documents, however, at the insistence of his counsel as well as Respondent's counsel, he finally reluctantly signed the same without reading or understanding fully what he was

signing.

As a result of these actions the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel, which at this point are pending internal review with the office of the Chief Trial Counsel for Enforcement of the California State Bar. [App: Vol I - VI]

In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

Specifically in the complaints the Petitioner outlined several incidents showing their lack of diligence and professional negligence, to wit:

1. Failure of Klopfenstein, and Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and Petitioner.

2. Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase

documents which could have detailed taxes, sales and purchases payments made by respective family members on the disputed trust real and personal properties.

3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the 56 - 57 properties in question had been bought with monies that the petitioner had obtained either, personally or through loans, or by monies from our mother, Mrs. Eva Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based the entire case upon only six properties, despite the Petitioner's repeated requests and warning to include the entire 56-57 pieces of real property, and various personal property.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale

of the properties, and massive personal property and clothes of both the Petitioner mother Eva Sherman, and the Petitioner.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as his salaried bookkeeper.

6. Klopfenstein, and Polin failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented regarding estoppel under the theory of the Statue of Frauds.

7. Despite numerous requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To the Petitioner's detriment and against the Petitioner's repeated written and oral requests, Klopfenstein and Polin filed to waive a jury trial in the case thereby depriving the Petitioner yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced the Petitioner and thereby creating unspeakable fear and turmoil and forcing the Petitioner into settling the case by repeatedly advising him that he had no case at all, and would lose all the properties and receive nothing if he did not settle immediately. They even evoked the courts admonition that he did not have a meritorious case at all that his case was only worth thirty minutes of consideration notwithstanding that the case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their

authorized agents and their attorney's in fact. It seemed apparent to the Petitioner that neither attorney had properly researched or prepared the case as the documents and testimony had been given to them by the petitioner and they had it in their files for almost one year.

Subsequent to the two complaints and after several inquiries by the Petitioner, including a renewal of his complaints on or about January 20, 1997, the State Bar of California noticed the Petitioner that they were not taking action.

It is imperative in light of the actions of the Petitioner's former attorneys that this matter be reviewed as to their actions so that the appropriate actions be brought.

STATEMENT OF LAW

I.

REVIEW OF THIS MATTER SHOULD BE GRANTED

Pursuant to the provisions of C.R.C. § 952(d) the Supreme Court has jurisdiction to review any order of the State Bar of California.

To this end the Petition must be filed within 60 days of the date of the written notice.

In the instant matter in and that the notice was dated November 26, 1997 the instant Petition is timely.

In reviewing such cases this Court has

found that the petitioning party has the burden to demonstrate that the respondent's recommendation is erroneous and unlawful. *See* *In re Trebilcock*, *30 Cal. 3d 312 (1981)*.

A.

THE ACTIONS OF THE PETITIONER'S PREVIOUS COUNSEL

In the instant matter as clearly set forth herein, with the evidence that was before the State Bar of California at the time of their decision not to discipline the attorney's in question such is plainly the case.

As set forth herein as a result of the actions of his attorney's in their representation of his in *Sherman v. Sherman* the Petitioner filed complaints with the California State Bar, on or about June 1, 1995 and August 17, 1995, as to his previous counsel. [App: Vol I - VI]

In those complaints the Petitioner plainly outlined the facts supporting his complaints specifically showing that soon after the initial retaining of Klopfenstein and Polin both, the parties began to exhibit many signs of inattentiveness, inexperience in such cases as the petitioner's as well as negligence and a lack of diligence on his case.

Specifically in the complaints the Petitioner outlined several incidents showing their lack of diligence and professional negligence, to wit:

1. *Failure of Klopfenstein, and*

Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and Petitioner.

2. Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase documents which could have detailed taxes, sales and purchases payments made by respective family members on the disputed trust real and personal properties.

3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the 56 - 57 properties in question had been bought with monies that the petitioner had obtained either, personally or through loans, or by monies from our mother, Mrs. Eva Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based the entire case upon only

six properties, despite the Petitioner's repeated requests and warning to include the entire 56-57 pieces of real property, and various personal property.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale of the properties, and massive personal property and clothes of both the Petitioner mother Eva Sherman, and the Petitioner.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as his salaried bookkeeper.

6. Klopfenstein, and Polin failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory

of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented regarding estoppel under the theory of the Statue of Frauds.

7. Despite numerous requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To the Petitioner's detriment and against the Petitioner's repeated written and oral requests, Klopfenstein and Polin filed to waive a jury trial in the case thereby depriving the Petitioner yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced the Petitioner and thereby creating unspeakable fear and turmoil and forcing the Petitioner into settling the case by repeatedly advising him that he had no case at all, and would lose all the properties and receive nothing if he did not settle immediately. They even evoked the courts admonition that he did not have a meritorious case at all

that his case was only worth thirty minutes of consideration notwithstanding that the case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their authorized agents and their attorney's in fact. It seemed apparent to the Petitioner that neither attorney had properly researched or prepared the case as the documents and testimony had been given to them by the petitioner and they had it in their files for almost one year.

In looking at the allegations it is evident that both Polin and Klopfenstein acted, not to the best interest of their client, but in such a way as to insulate themselves from their own negligence as was pointed out to them by the trial court on or about February 27, 1995 before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles County.

To this end it has been held that the habitual disregard of an attorney of the

interest of its client warrants disbarment[10], however, this was totally disregarded by the State Bar in their decision.

Furthermore, in their investigation the subject attorney relied upon the dicta of the judge in the state court action at the hearing on the Petitioner's motion to set aside the underlying Settlement Agreement.

At the hearing despite his previous admonishment of the Petitioner's prior counsel, on or about February 27, 1995, as to the various errors made in the entrance of evidence, and the lack of legal grounds for the recovery sought, Judge Ross in dicta made an unsolicited finding of fact that the two subject attorneys had done a fine job in the representation of the Petitioner and in making the settlement.

It is interesting to note that both of these attorneys joined in with the Defendants' in their opposition to motion.

To this end, at the time of the underlying motion the Petitioner had filed the subject complaints with the State Bar regarding the attorneys' conduct and was also in the process of filing a State Court action against them for malpractice resulting from gross professional negligence, incompetence, and fiduciary violations in their handling my case.

As set forth to the State Bar, and as

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[10] *Marcus v. State Bar*, 27 Cal. 3d 199 (1980).

herein reiterated upon, it should be noted that if these two individuals had said anything else but what they did in their declarations it would have been career suicide for them in light of the circumstances which then surrounded them. Therefore their declarations were purely self-serving, incomplete, and mislead the court and should have been viewed that way, or at least with a great deal of suspicion.

To this end, however, beyond the suspicions nature of the circumstances behind these findings, these findings still should have no bearing for as set forth in *Rohe v. State Bar, 17 Cal. 2d 445 (1941)* the reason for a client's civil action against attorney and motive behind initiation of disciplinary proceedings were not controlling in determining whether an attorney should be disciplined where the facts disclosed independently indicated that an attorney was subject to disciplinary action.

Hence, for the reasons as herein outlined, review of this denial of discipline as to Polin and Klopfenstein should be granted.

B.

THE ACTIONS OF OPPOSING COUNSEL AGAISNT THE PETITIONER

In the instant case the opposing party in the underlying lawsuit, who incidently is the brother of the Petitioner, was represented by attorney George DeRoy, State Bar Number 22669.

In approximately 1984 the Petitioner herein divorced his former wife. As a part of the negotiations of that divorce during 1983 and 1984, issues arose regarding the Petitioner's former spouse's communal interest in the subject properties due to the community property laws in the State of California.

As part of the negotiations George DeRoy acted as counsel for the Sherman Family Trust as well as the Petitioner's brother, and assisted the Petitioner, and his divorce counsel in reaching an amicable resolution and settlement regarding said issues with Appellant's former spouse and her counsel.

During the course of this cooperative co-association several documents were prepared and co-authored by Appellant's divorce counsel, Jerry Green, and attorney George DeRoy in an effort to protect the Trust property from possible seizure by the Petitioner's ex-wife as part of the divorce settlement.

To this end, several of these documents even though prepared were never filed in the Petitioner's divorce case as they were not needed. One such unsigned document, so entitled Memorandum of Understanding, surfaced during this litigation and to this end was utilized by the trial judge in his denial of the present §473 Motion as well as other pre-trial decisions.

It is unknown to this Petitioner how this particular document or other similar

documents were obtained, or for that matter entered into evidence by the opposing counsel.

The Petitioner can only surmise that the opposing counsel's intricate and complete knowledge of the property issues concerning the Trusts issues which were raised in the Petitioner's divorce proceedings some twelve (12) years ago is what led the Respondent's counsel to these irrelevant and unfiled documents which he used to cloud the issues, quite successfully in the instant case.

The court has held that the representation by a trial counsel who has a conflict of interest denies the client a fair trial and is thus reversible per se. *See* *Hammett v. McIntyre* *114 Cal.App. 2d 148, 158 (1952)*. However, a more recent ruling indicates that there must be an affirmative showing that the conflict affected the outcome of the proceeding to the prejudice of the complaining party. *See* *In Re: Sophia B.*, *203 Cal.App. 3d 1436, 1439 (1988)*.

Hence, as can be seen since the evident conflict of interest, directly impacted the Petitioner to his detriment.

Further to this point George DeRoy had a duty to disclose this conflict of interest which he did not.

This also was brought to the attention of the State Bar in numerous conversations had between the Petitioner and the State Bar, however on this issue the State Bar has also chosen not to act.

However, from the evidence presented this position is clearly erroneous and screams for review.

CONCLUSION

In light of the facts as herein presented this tribunal should review the underlying denial of the State Bar of California and premised upon the facts as presented ad nauseam find disciplinary actio is warranted against the attorney's named herein.

Dated: Respectfully Submitted,

By: /S/
Michael M. Sherman

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1888 CENTURY PARK EAST, LOS ANGELES, CA 90067.

On January 26, 1998 I served the following document(s) described as PETITION FOR REVIEW on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

GEORGE DeROY, ESQ.
HOCHMAN, SALKIN & DeROY
9150 WILSHIRE BLVD., STE 300
BEVERLY HILLS, CA 90212-3414

The State Bar of California
1149 S. Hill St.
Los Angeles, CA 90015

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 1998, at Los Angeles, California.

\s\

Istvan Stone

IN THE
SUPREME COURT OF THE UNTIED STATES
October Term, 1998

MICHAEL M. SHERMAN,
Petitioner,
vs.
JEROME SHERMAN, PAT PLASCENCIA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
AFTER A DECISION BY THE
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

MICHAEL M. SHERMAN
1002 17TH ST.
SANTA MONICA, CA 91403
(310) 453-2610

i.

QUESTIONS PRESENTED

1. Whether this Court should grant certiorari to resolve whether or not Petitioner's due process rights as guaranteed his under both the United States Constitution and the Constitution of the State of California were violated?

2. Whether or not the Superior Court of the State of California violated Petitioner's due process rights by its actions?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari be issued to review the Order issued by the Supreme Court of California denying review of the California Court of Appeals decision affirming the lower courts denial of Petitioner's motion to set aside a stipulation derived through egregious injustice and an affront to public interest.

OPINIONS BELOW

The Order of the Supreme Court denying the review is unreported. (App., *infra* 1) The Order of the California Court of Appeals denying reconsideration of their Opinion is unreported. (App. *Infra* 2). The opinion of the California Court of Appeals is also unreported. (App. *Infra* 3 through 13).

JURISDICTION

This Petition is from a denial of review by the California Supreme Court which affirms a lower court judgment which Petitioner alleges violated his constitutional rights to due process.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Fifth and Fourteenth Amendment to the United States Constitution, as well as the California Code of Civil Procedure § 473.

STATEMENT OF THE CASE

A. THE UNDERLYING STATE COURT CASE

Michael M. Sherman ("hereinafter referred to as Petitioner") filed the instant case on or about 7/15/93. In this action, Petitioner sought to enforce an oral trust in real and personal property; establish a constructive trust in real and personal property; partition real property; obtain an accounting; obtain declaratory relief and obtain damages for breach of fiduciary duty (the "Complaint").

The action arose out of Petitioner's and Respondent's respective ownership rights to 56-57 real estate trust properties in California and New York, various personal trust property, including, trust supplies, equipment, vehicles, bank and security box vault items of parents Eva and Nathan Sherman, all total valued in excess of Fifteen Million Five Hundred Thousand Dollars, ($15,500,000.00) and Petitioner's and Respondent's rights to the income and benefits from the 56-57 real estate trust properties and various personal trust property, the trust has existed for over sixty (60) years, and was used to Respondent's and Co-Respondent's sole benefit.

The case was set for a Final Settlement Conference on 2/27/95, before the Hon. Edward M. Ross in Dept. 39, of the Los Angeles Superior Court.

At the hearing the Superior Court Judge, in response to the Petitioner's attorney's estimation of trial length being 5 to 10 days, demonstrated its own opinion of the case by stating, to wit:

"THE COURT: All right. What's your time estimate?

MR. KLOPFENSTEIN: I think five to ten days, your Honor, is a realistic time estimate.

THE COURT: I don't.

MR. KLOPFENSTEIN: I know you don't.

THE COURT: I don't. I think maybe a half hour is a more realistic time estimate. You know, there is an old saying Mr. Klopfenstein, something about if you can't dazzle them with brilliance, baffle them with bull.

You have given me these exhibits here with a thousand pages. You must have dug up every single scrap of paper you could find to put in this exhibit book.

MR. KLOPFENSTEIN: I have some additional ones, your Honor.

THE COURT: No, you don't. No, you don't. If they are not in the exhibit book that's been submitted, you don't have any. . ."

Furthermore the Court went on to point out the obvious discrepancies of the case,

caused by the negligence of the Petitioner's counsels, to wit:

THE COURT:. . . But what you have got, let me tell you what you have got. First of all, I can't see any way that I am not going to sustain the objections that Mr. DeRoy has filed for Exhibits 1 through 38 and 45, I think it was.

You have got what appears to be an insolvable problem with the Probate Code on the Statute of Frauds. You can't have an oral trust. I mean, its not my ruling; its the legislature that says you can't have an oral trust.

There no question, there is no question but that Jerome put a lot of property in Michael's name over the course of the years. That's a gimme. But you've given me roughly 1,000 pages, 99 percent of which have absolutely no relevance to any issue here. A bunch of deeds - - I mean, it's interesting to see how they did things in New York in the twenties and thirties and see all those old deeds. And you have got some lot book descriptions, you've got all kinds of things in there. But, you know, an awful lot of chaff but no wheat.

What you do have is a few

properties where, if, in fact, you have a legitimate constructive trust, you can pursue that.

MR KLOPFENSTEIN: Well, your Honor, we have six properties[11] *that are clearly. . . that we have six properties that both Jerome and Michael Sherman are tenants in common on, that at this time or at the time of the trial, we would ask for dec relief on that, your Honor, and an accounting.*

The Court further pointed out other problems caused by Petitioner's attorneys' lack of proper trial preparation, to wit:

"THE COURT: . . . And if you can show how a constructive trust can apply, if you can show how Michael, Notwithstanding the 1983 letters, notwithstanding the 1983 document[12] *that evidently his attorney at that time prepared saying that even though we hold*

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[11] It should be noted here, the original complaint involved approximately 57 properties. .

[12] The 1983 document herein referred to by the Court, are documents, one of which was unsigned, that were allegedly used in the Appellant's divorce, 12 to 13 years ago, in which this opposing counsel acted as co-counsel representing all of the Petitioner and Respondent's trust interests.

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these properties in our joint names they were for my benefit and they all belong to Jerome; then if you can proof [sic] that, in fact, Michael put something into it that's fine. Certainly happy to hear that, as a constructive trust.

MR KLOPFENSTEIN: Okay. Well we think we can, your Honor.

THE COURT: You actually have evidence that Michael put monies into these properties?

MR. KLOPFENSTEIN: Yes.

THE COURT: All right. Where is the evidence?

MR. KLOPFENSTEIN: We have checks, your Honor, we - -

THE COURT: No, you don't have checks. You may think, counsel, that our court rules are just for filing, but look at Rule 7.9. Even if you ignore my final status conference order, look at Rule 7.9(D), which requires you to submit the documentary evidence in the exhibits. You are not going to bring checks in now that you haven't submitted. I've looked through these exhibits. I take the time to look through them, even the thousand pages or so. Look at this.

MR. KLOPFENSTEIN: I know you do,

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your Honor.

THE COURT: Now, are there any checks in here?

MR. KLOPFENSTEIN: There are no checks in there."

The lower Court further pointed out flaws caused by an alleged, and arguable piece of evidence that was entered as unsigned, and had been an averred part of Petitioner's divorce, 12 years previously.[13]

"THE COURT: How are you going to get past the Dearest Mother letter? Well, all right. Let's not get into the facts now. By the way, was that document signed? I think its Exhibit 3.

MR. DEROY: There is a dispute, your Honor. We do not have a signed document, but we have evidence that there was a signed document."

The trial court, at a side bar with counsel, held off the record, but, loud enough for Petitioner to hear, expressed his

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[13] It should be noted here that the Respondent's counsel herein acted as counsel for the trusts during the Petitioner's divorce case in 1983 and 1984, and to this end worked in conjunction with Petitioner's divorce counsel. Further, Petitioner's counsel, Jerry Green, co-authored several documents with opposing counsel herein in an effort to protect Petitioner's interest in the trust properties.

opinion that Petitioner didn't have a case and Petitioner should settle[14]. As a result Petitioner's counsels, at the lunch break warned Petitioner that if he did not settle the case immediately there would be serious reprisals from the Respondent's counsel and the judge, and further that he "would not receive anything, lose everything, and not receive any properties" and he had heard what Judge Ross said that he had no case.

Subsequently, during the afternoon session in Court on 2/27/95, the Petitioner heard for the first time the volumous and confusing verbal terms of the settlement. At this time Judge Ross told the Petitioner he was sure Petitioner understood the terms, and asked him if he accepted, which Petitioner did on the Court record despite Petitioners non-understanding of the terms. Hence his acceptance was involuntary as he had no understanding of the situation before him.[15]

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[14] The content of this controversial "side bar" was admitted in the Respondent's Opening Brief filed in the California Court of Appeal, where the Respondent admitted that the court had directed the parties to settle.

[15] It should be noted that subsequently the Petitioner has been diagnosed as having Post Traumatic Stress Syndrome, the effects of which render him incompetent during time of severe stress and anxiety. See report of Dr. Thomas Kappeler, M.D. and clinical

The Superior Court Judge then vacated the trial date stating that the Court would show the settlement "as a conditional settlement" upon the Court's approval of the settlement on 4/10/95. Respondent's counsel stated that he would prepare a dismissal of the action and requested that all be excused from Court if the dismissal was filed prior to 4/10/95.

Respondent's counsel was ordered to prepare the Settlement. During this time Petitioner was in Mexico relying upon his counsel to review and discuss any documents with him. However, the Petitioner again stated that he did not wish to settle the case but instead wanted the case litigated in front of a jury.

On or about 3/6/95 Petitioner's counsel, Michael R. Polin, faxed Petitioner a proposed final draft of a settlement agreement along with a cover letter. The letter referenced previous conversations in which Petitioner refused to sign any settlement refusing to settle the case.

Accordingly Petitioner's counsel advised Petitioner that if he did not appear at Respondent's counsel's office on 3/7/95 to sign the settlement of the case the Respondent would proceed to Court and get a judgment entered anyway, this judgment would not offer any "*of the protections that this*

Psychiatrist to which Judicial Notice is taken concurrent with this filing.

settlement agreement provides for as there will be no settlement agreement on record, only a judgment."

At the meeting on 3/7/95 Petitioner again refused to sign the documents, however, at the insistence and threats of his counsel as well as Respondent's counsel, he finally involuntarily and full of fear and intimidation, was forced to sign the same without reading or understanding what so ever he was signing.[16]

B. THE FILING OF THE MOTION TO SET ASIDE AND THE SUPERIOR COURT JUDGE'S ATTEMPTED RECUSAL

Because of these actions Petitioner filed complaints with the California State Bar, on or about 6/1/95 and 8/17/95.

Petitioner also filed a motion to set aside the settlement and the dismissal with prejudice, pursuant to the provisions of C.C.P. §473, on or about 7/11/95, premised upon the fact that Petitioner was forced and coerced into settling the case.

The Petitioner, however, did not feel given the previous actions of the trial court that he would be able to receive fair and unbiased treatment before this jurist.

As a result on or about 7/30/95, the Plaintiff/Petitioner filed his *VERIFIED STATEMENT OF DISQUALIFICATION OF JUDGE*

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[16] See previous footnote regarding the Petitioner's medical condition

requesting the Judge be removed from his case grounded upon the fact that the Hon. Edward M. Ross was disqualified from hearing the above entitled matter in that in violation and contrary to Sec, 170.1(a)(6) of the California Code of Civil Procedure.

On or about 9/29/95, after review by the Hon. Theodore E. Millard, Assistant Presiding Judge of Orange County Superior Court sitting on assignment by the Judicial Counsel of Los Angeles, the statement was denied, premised on the Court's findings that the *VERIFIED STATEMENT OF DISQUALIFICATION OF JUDGE* was untimely, and that the comments complained upon were during the course of Judge Ross discharging his duties to rule on motions.

Petitioner feels the judge erred in its decision for the *VERIFIED STATEMENT OF DISQUALIFICATION OF JUDGE* was timely and the comments outlined in the statement went well beyond the simple discharging of duty by the trial court, and as a result, on or about 10/10/95, Petitioner filed a Petition for Writ of Mandate with the Court of Appeal, said appeal was denied leading the Petitioner to file a Petition for Review with the California Supreme Court, on or about 11/8/95.

In and that a hearing had been previously set for 11/14/95 on the Petitioner's Motion, on or about 11/13/95, Petitioner filed a Petition for Stay with the California Supreme Court, to stay the hearing

on the matter pending a decision regarding the Superior Court Judge.

C. THE ATTEMPTED LODGMENT OF DOCUMENTS SUPPORTING THE MOTION TO SET ASIDE

furthermore, prior to the hearing on the motion the Petitioner prepared approximately six volummes of documents and sending the same to the lower court for lodging.

The six volummes included the two State Bar complaints with their supporting documents which the Petitioner had filed against his former attorneys Klopfenstein and Polin which demonstrated the actions of his former attorneys as also set forth in the motion.

These documents were denied on three occasions by the Superior Court Judge's clerk in Dept.39, of the Los Angeles Superior Court, with some rather choice words being said to the courier at the time regarding Petitioner's actions toward the lower court

judge in his attempts to recuse him.[17]

On the fourth attempt, the six volummes of critical evidence were lodged, however, returned to the Petitioner at the hearing on 11/14/95 evidently unread.

D. THE HEARING ON THE MOTION TO SET ASIDE

At the hearing on the matter before Judge Ross on 11/14/95, the Judge, before even getting into the motion itself, made it a point to return the lodged documents, stating:

> *"THE COURT: Before we are through, Mr. Michael Sherman, I will give you back that big box of documents that you have lodged with the court. I really don't think we are going to need them. . ."*

When further pressed regarding the documents the trial court stated at least twice its feeling that the material had no relevance to the motion, to wit:

> *"They are not relevant to this motion, they are not relevant to*

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[17] It should be noted here that on or about August 8, 1996, the Appellant filed a motion pursuant to C.C.P. § 909 and C.R.C. § 23, to receive additional evidence on the appeal consisting of the declaration of John P. Daniel who was the commercial courier who attempted the initial lodgement. This request was denied on or about August 28, 1996, and to that end the Appellant filed a request for reconsideration of the denial which was also denied.

anything that is pending before this court.

"Mr. Sherman, those documents have nothing whatsoever to do with whether or not we should set aside the settlement that you entered into.

Furthermore, the trial court refused to continue the hearing pending the outcome of the Petition for Review filed with the California Supreme Court as well as, the Petition for Stay being filed with the Supreme Court, instead going forward with the hearing.

At this hearing the Superior Court in its statements made an unsolicited finding of fact that the Petitioner's counsel did a fine job in the representation of the Petitioner and in making the settlement, which were contrary to its statements of 2/27/95 to wit:[18]

". . . Based upon my review of the documents that had been lodged -- the exhibits that had been lodged,

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[18] It should be noted by this Court that the Appellant's two previous counsel utilized this unsolicited and unsupported findings of fact to their advantage in two other related actions to defeat the Appellant's defenses in their actions against him for unpaid final fees, as well as their initial defense to the State Bar Complaints, which are now a subject of internal review with the California State Bar.

I should say, for trial, based upon my review of the trial statements that had been lodged, I thought that the settlement that was entered into was rather advantageous to you.

I think your lawyer did a terrific job in the settlement he had because based upon what I had seen up to that point from the documents that were lodged for trial you really didn't seem entitled to much. I though your brother was being rather generous."

From a denial of the Motion the Petitioner filed an appeal grounded upon the lower court error in the denial of the motion.

E. THE COURT OF APPEAL'S DECISION

After the filing of the notice of appeal, Petitioner attempted to supplement the evidence at least twice to support his position on the appeal. On or about 8/8/96, Petitioner filed a motion pursuant to C.C.P. §909 and C.R.C. §23, for additional evidence consisting of the declaration of John P. Daniel who was the commercial courier attempting the initial lodgement. This request was denied on or about 8/28/96, resulting in the Petitioner filing a request for reconsideration of the denial which was also denied.

Subsequently on or about 8/29/96 the

Petitioner filed a similar motion with the Court of Appeal, requesting to enter court certified file copies of documents in the Petitioner's divorce case, *Sherman v. Sherman, LASC, D 086 663*, to wit: EXHIBIT A Petition for Dissolution of Marriage, Case No. D086663, filed 02-04-83;
EXHIBIT B - Petitioner's Property Declaration filed 02-04-83;
EXHIBIT C - Interlocutory Judgment of dissolution of Marriage dated January 11, 1984.

This additional evidence, was *necessary and directly relevant to the matters on the appeal, as the appeal was grounded upon an abuse of discretion by the lower court. In support of its position the lower court pointed to certain documents apparently prepared and entered during the Petitioner's divorce, in which the opposing counsel in this matter was representing the alleged trust, which apparently supported the alleged ownership and/or understood characterization of certain properties of the trust.*

Lastly, on or about 2/20/97 Petitioner filed a Request for Judicial Notice with the Court of Appeal requesting notice of related documents filed with the California State Bar on or about 1/26/97 which encompassed Petitioner's Renewed Complaints Against his two previous attorneys. However, this request was denied.

In the decision the Appeal Court affirmed the underlying judgment finding the

record did not support a claim of mistake, inadvertence, surprise or excusable neglect.

Moreover, the Appeal Court found that the record did not support a claim of equitable relief.

As for the denial Petitioner found several errors as to facts stated which were contrary to facts as supported by the evidence. As a result Petitioner filed a Request for reconsideration with the Appeal Court which reserved his rights as to those issues.

From this denial Petitioner filed a Writ for Review with the California Supreme Court which was denied.

REASONS FOR GRANTING THE WRIT

1. THIS COURT SHOULD REVIEW THE UNDERLYING CASE TO DETERMINE IF PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED.

Due process is one of the most important rights guaranteed citizens of the United States, it was so important that it was one of the original rights outlined by our founding fathers, this being said this right was established and outlined in California's constitution from its onset in 1852, as well as our Federal constitution.

In fact it has been held that *"[a] fair hearing is a requisite of due process in both civil and criminal cases, and its denial is an act in excess of jurisdiction and reversible error per se."* *In re Hector R., 152 Cal. App. 3d 1146, 1153 (1984).*

Further to this point it has been held

that *"[d]ue process demands impartial impartiality on the part of those who function in the judicial or quasi judicial capacities. Schweiker v. McClure, 456 U.S. 188, 102 S. Ct. 1665 (1982). See also Jackson Water Works, Inc. v. Public Utilities Com'n of State of Cal., 793 F2d 1090, certiorari denied 479 U.S. 1102, 107 S. Ct. 1334 (1986) (holding that due process clause guarantees aggrieved party opportunity to be heard and have its merits fairly decided; under due process, every party is entitled to impartial tribunal)*

This is the premise behind our current statutes, both federal as well as in the State of California, which allows the setting aside of judgments which for some reason denies the movant its right to a fair hearing. *See Roth v. Morton's Chefs Services, Inc. 173 Cal.App 3d 380, 385 (1985), dealing with settlements agreements.*

It has also been held that *"a client's right to reject a settlement is absolute. To hold otherwise would deprive the client of his due process right to proceed to trial on the merits." Estate of Falco, 188 Cal. App. 3d 1004, 1018 (1987).*

In this case the Courts errors, actions and demeanor have lead to this point, when examined in their totality show that Petitioner's due process rights were indeed violated.

In the first instance, the Petitioner is abused by the forcefulness of two

attorneys, who hid their neglect by pushing Petitioner into an involuntary settlement he did not want, and then when he attempted to utilize state procedures to set aside the coerced settlement he is almost summarily dismissed by the trial judge, after an unsuccessful attempt to recuse that judge.

It can be seen that the rights and protec-tions afforded to Petitioner by not only the Constitution but State Statutes and case law have been completely ignored by the lower court. Even the California Appeal Court could not, or would not see the atrocity this case represents and to that end affirmed the Superior Court's ruling and in doing so subtly misstated or glossed over some very important issues.

The case further was summarily denied review by the California Supreme Court.

From the facts presented it can rightly be said that treatment received by Petitioner shocks the conscience and only serves to undermine the principals of "due process".

As it relates to this case the United States Court of Appeal for the 9th Circuit found that *"[d]ue process is denied where the procedure tends to shock the sense of fair play"*, Howard v. United States, *372 F2d 294 (1967)*. This is certainly the case here and for that reason writ should be issued.

2. **THE STATE COURT VIOLATED THE PETITIONER'S RIGHTS TO DUE PROCESS**

Based upon the facts of the case Petitioner filed a motion to set aside the

underlying settlement under C.C.P. § 473 which alleged that the settlement herein was not voluntary on behalf of Petitioner, resulting from "arms length negotiations", but instead one that was derived through duress, coercion, undue influence, and intimidation[19].

As stressed to the California Supreme Court it has been held in California that public policy supports pre-trial settlements which are favored as productive to peace and good will of the community, *Roth v. Morton's Chefs Services, Inc. 173 Cal.App 3d 380, 385 (1985).*

> *"[a] stipulated settlement is not so important, however, that it will withstand all attacks and must be supported at all costs. Ordinarily a party may be relieved*

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[19] This very clearly sets forth the record which shows on or about 3/6/95 the Petitioner's counsel, Michael Polin, faxed to a proposed final draft of a settlement. The letter referenced six previous voice mail messages where Petitioner stated he refuses to sign any settlement and refusing to settle the case.

Furthermore, the letter advises that if he did not show up at Respondent's counsel's office on 3/7/95 to settle the case Respondent would proceed to Court and get a judgment, which judgment would not offer any *"of the protections that this settlement agreement provides for as there will be no settlement agreement on record, only a judgment."*

from a stipulation to the Court and a hearing made on affidavits. The Court thereafter exercising its sound discretion may set aside a stipulation entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation. (Citation)" Ibid *385.*

Furthermore the Roth Court also found that

"Any doubts in applying section 473 must be resolved in favor of the party seeking relief, because the law strongly favors trial and disposition on the merits." Ibid. *@ 385.* ***(Emphasis added on the underlined portions).***

The facts presented to the state court, at all levels demonstrated, that Petitioner was coerced into settling the his case.

In California the restatement of Judgments, as well as the Courts recognize duress as a ground for setting aside a judgment, and/or settlement. *See Rest.2d, Judgments §70. See also In re: Marriage of Brockman, 194 Cal.App. 3d 1035, 1035 Cal. Rptr. 96 (1987); In re: Marriage of Baltins,*

212 Cal. App.3d 66, 260 Cal. Rptr. 403.

Further to this point, it was pointed out that it had been held that "*[d]uress is to be distinguished from extrinsic fraud, although, if proven, it is a valid ground to set aside a judgment and marital settlement agreement. Duress, however, is more than mere threats or puffing; a party must be shown to have intentionally used threats or pressure to induce action or non-action to the other parties detriment*". *In re Marriage of Stevenot, 154 Cal.App. 3d 1051, 1074, 202 Cal.Rptr. 116 (1984).*

Premised upon this the Petitioner sought to have the underlying settlement set aside.

A. THE UNDERLYING TENOR OF THE COURT AT THE TIME OF THE HEARING

From the record, at the time the Petitioner filed the motion to set aside the settlement he had filed a *VERIFIED STATEMENT OF DISQUALIFICATION OF JUDGE* requesting the Superior Court Judge be removed from hearing the underlying case.

These requests, at all levels were eventually denied, however at the time of the hearing they were still pending.

Also during this time, the Petitioner, had prepared extensive documents and trust deeds consisting of approximately six (6) volummes of documents and sent the same to the Superior Court for lodging in support of his motion.

The documents which comprised the six

volummes included the two State Bar complaints with their supporting documents which the Petitioner had filed against his former attorneys Klopfenstein and Polin. The actions complained of in these complaints were the very actions outlined as grounds in the motion to set aside.

Initially the documents' lodgment were denied by Superior Court Judge's clerk in Department 39, of the Los Angeles Superior Court, with some rather choice words being said to the courier-messenger at the time regarding the Petitioner's actions toward the lower court judge in his attempts to recuse the judge.[20]

On the fourth attempt, the Volummes were lodged.

These actions, although unknown to the Petitioner at the time, were to be indicative of the stage set for him at the hearing.

B. THE HEARING ON THE MATTER

At the hearing the lower court, despite the fact that the lodged documents actually

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[20] It should be noted here that on or about August 8, 1996, the Appellant filed a motion pursuant to C.C.P. § 909 and C.R.C. § 23, to receive additional evidence on the appeal consisting of the declaration of John P. Daniel who was the commercial courier who attempted the initial lodgement. This request was denied on or about August 28, 1996, and to that end the Appellant filed a request for reconsideration of the denial which was also denied.

included the two State Bar complaints against the two former attorneys whose very actions were the subject of the motion, made a point of returning the lodged documents in essence surmising several times during the hearing that said documents had nothing to do with the motion, to wit:

> *"Before we are through, Mr. Michael Sherman, I will give you back that big box of documents that you have lodged with the court. I really don't think we are going to need them. . ." [RT: 031]*
>
> *"They are not relevant to this motion, they are not relevant to anything that is pending before this court. [RT: 034, ln 7 - 9]*
>
> *"Mr. Sherman, those documents have nothing whatsoever to do with whether or not we should set aside the settlement that you entered into.*

Further despite being advised by the Petitioner of the Petition and as well, the Petition for Stay being filed with the Supreme Court, the trial court refused to continue the matter and persisted to continue forward with the hearing.

At the hearing despite his previous admonishment of the Petitioner's prior counsel, on or about February 27, 1995, as to the various errors made in the entrance of evidence, and the lack of legal grounds for the recovery sought, the trial court in its

statements made an unsolicited finding of fact that the Petitioner's counsel did a fine job in the representation of the Petitioner and in making the settlement, to wit:[21]

> *". . . Based upon my review of the documents that had been lodged -- the exhibits that had been lodged, I should say, for trial, based upon my review of the trial statements that had been lodged, I thought that the settlement that was entered into was rather advantageous to you.*
>
> *I think your lawyer did a terrific job in the settlement he had because based upon what I had seen up to that point from the documents that were lodged for trial you really didn't seem entitled to much. I though your brother was being rather generous."*

Hence, the supporting documentation

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[21] It should be noted by this Court that the Appellant's two previous counsel utilized these unsolicited and unsupported findings of fact to their advantage in two other related actions to defeat the Appellant's defenses in their actions against him for alleged unpaid final fees, as their initial defense to the State Bar Complaints, which are now a subject of internal review with the California State Bar, and finally, in at least one instance, as a complete defense against the Appellant's malpractice action.

supplied by the Petitioner was never even considered by the lower court and in fact it is doubtful if it was even reviewed.

Furthermore, despite numerous attempts by the Petitioner to address the issues in the hearing the Petitioner was summarily, in essence, estopped from arguing.

At one point when attempting to get into the underlying facts the lower court even boldly said *"No, no. Let's not get into the facts."*

In essence the Petitioner despite his attempts was not given an opportunity to argue his points or obviously even have the supporting evidence considered by the lower court.

From this the trial court in essence summarily denied the Petitioner motion, without even allowing the presentation of argument or evidence supporting the motion.

C. THE ABATEMENT OF THE PETITIONER'S RIGHTS

The purest premise of due process rights under the constitution guarantees a party to a hearing before a fair and impartial jurist. *See* Catchpole v. Brennon, *36 Cal.App. 4th 237 (1995); In re Hector R., 152 Cal. App. 3d 1146, 1153 (1984); Estate of Buchman, 123 Cal. App. 2d 546 (1954).*

To this end, due process is one of the most fundamental rights guaranteed citizens of the United States.

To that end it has been held that *"[a] fair hearing is a requisite of due process in both civil and criminal cases, and its denial*

is an act in excess of jurisdiction and reversible error per se." In re Hector R., 152 Cal. App. 3d 1146, 1153 (1984).

Further to this point it has been held that *"[d]ue process demands impartial impartiality on the part of those who function in the judicial or quasi judicial capacities. Schweiker v. McClure, 456 U.S. 188, 102 S. Ct. 1665 (1982). See also Jackson Water Works, Inc. v. Public Utilities Com'n of State of Cal., 793 F2d 1090, certiorari denied 479 U.S. 1102, 107 S. Ct. 1334 (1986) (holding that due process clause guarantees aggrieved party opportunity to be heard and have its merits fairly decided; under due process, every party is entitled to impartial tribunal)*

This is the premise behind our current statutes which allow the setting aside of judgments which for some reason deny the movant its right to a fair hearing upon the merits. *See Roth v. Morton's Chefs Services, Inc. 173 Cal.App 3d 380, 385 (1985), dealing with settlements agreements.*

In looking at the instant case the Petitioner herein suffered in essence a double infringement of his constitutional rights to due process.

In the first instance the Petitioner was forced against his will and unmercifully intimidated into settling a case that he did

not want to settle.[22]

To this end, in California it has been held that *"a client's right to reject a settlement is absolute. To hold otherwise would deprive the client of his due process right to proceed to trial on the merits."* *Estate of Falco*, *188 Cal. App. 3d 1004, 1018 (1987)*.

Hence, in their denial of their client's wishes not to settle the instant case, the Petitioner's previous counsel intimidated and coerced the Petitioner into the instant settlement, depriving him of his basic rights to try the matter on its merits.

However, the Petitioner utilized one of the stop gap measures enacted by the legislature to undue this wrong and proceeded to move the trial court to set aside the

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[22] Though their has been great controversy about the Petitioner's desire to settle, even addressed by the California Court of Appeal in their Opinion, where they supported their conclusion by finding that he could have said no at the hearing or refused to sign the eventual settlement agreement, it cannot be dispute from the record that the Appellant emphatically maintained the position that he did not want to settle the case or sign any settlement agreements. This point was brought out in the March 6, 1995 letter from Michael Polin to the Appellant where Polin made specific references to the Petitioner's six phone messages. The tone of this very letter shows the amount of intimidation, threats and pressure being exerted on the Appellant by his own advocates to settle the case.

settlement under C.C.P. § 473.

However, his faring before the trial court of the motion resulted in yet another derivation of his basic rights.

As the court in *Estate of Buchman*, *123 Cal App. 2d 546 (1954)* found:

> *"When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly, and deliberate method by which matters are litigated.* ***To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.*** *" Ibid @ 560 (Bolding has been added for emphasis)*

At the hearing on the Petitioner's motion on or about November 14, 1995 it can be seen from the transcripts that the trial court failed to abide by these basic principals. The trial court appeared frustrated, impatient and generally unwilling

to consider any of the statements of the Petitioner. However at the heart of any due process hearing is a requirement of an impartial decision maker. *Ponce v. Housing Authority of Tulare County, 389 F.Supp. 635 (D.C. Cal. 1975)*

In retrospect could this demeanor and tenor been caused by the attempts by the Petitioner to recuse the trial judge, for it was certainly discussed at the beginning of the hearing, when the trial judge refused to continue the matter. However, such is the risk assumed when one attempts to disqualify a judge.

This risk has even been recognized by the courts in California as well, for it has been held that on appeal issues of judicial bias can be raised whether or not any objections were raised at the trial court level. *See Catchpole v. Brannon, 36 Cal App. 4th 237 (1995)*

The *Catchpole* case is analogously similar to the case in point. In *Catchpole* the court examined a sexual harassment case brought by a former employee against an employer, wherein after judgment was rendered in favor of the employer, the former employee appealed premised in part on the alleged gender bias of the trial judge[23].

One of the issues raised by the

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[23] While gender bias is not an issue herein, the bias and tenor of the trial court is,

employer was that such a basis was barred due to the fact that the employee had never raised the issue prior to appeal.

In examining this the court made a finding that *"[t]he risk of offending the court and the doubt whether the problem could be cured by objection might discourage the assertion of even meritorious claims. Requiring the issue to be raised at trial would therefore have the unjust effect of insulating judges from accountability for bias.* Id @ 244

The Catchpole court further that the *"issue may be raised on appeal regardless of whether objection was made below"* Id @ 244. Hence the risk of bias caused by the attempt to recuse a judge is ever present.

However, the fact that this issue was not raised at trial court is not at issue for as seen the Petitioner did indeed attempt, albeit unsuccessfully. But the fall out resulting from such is at issue as it goes to tenor of the hearing.

It can be plainly seen that the evidence relied upon by the Petitioner was denied by the Superior Court as having nothing to do with the matter. This despite the fact that it contained the State Bar complaints which supported the Petitioner's very allegations and premises for the motion.

Furthermore, the Petitioner was summarily cut off by the Superior Court judge and not allowed to argue the merits of the issue.

Given these circumstances these actions certainly exceeded the bounds of reasoning to the point that it would be obvious to anyone that the Petitioner did not receive a fair hearing, under the basic premises of due process.

These things being shown the underlying judgment should have been reversed by the Court of Appeal for *"[i]t matters not whether there was actual bias, appearance of bias being sufficient to warrant reversal.* Id @ *248*

For these reasons this matter demands review by this tribunal.

CONCLUSION

In light of the violations of Petitioner's due process rights, the State Court's abuse of discretion which resulted in Petitioner's loss of a multi-million dollar estate and in the public interest, the Petitioner respectfully urges this Tribunal grant Certiorari.

Dated:

Respectfully Submitted

\S\

Michael M. Sherman

Second Appellate District Division Four No. BO98427

SO61513

IN THE SUPREME COURT OF CALIFORNIA

MICHAEL M. SHERMAN, Appellant

v.

JEROME SHERMAN, Et Al., Respondent

Petition for review DENIED.

George

Chief Justice

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION FOUR

MICHAEL M. SHERMAN,	)	B098427
	)	
Plaintiff / Appellant,	)	(Super. Ct. No.
	)	BC085156)
v.	)	
	)	
JEROME SHERMAN and	)	
PAT PLASCENCIA,	)	
	)	
Defendant /Respondent	)	
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County, Edward M. Ross, Judge. Affirmed.

Martin Wolf for Plaintiff and Appellant.

Hochman, Salkin & DeRoy and George DeRoy for Defendants and Respondents.

Despite the voluminous documents filed by appellant Michael M. Sherman (Appellant), this appeal presents a simple issue, that is, whether a party, represented by counsel, who agreed to a settlement in open court and later executed settlement documents, is

entitled to later assert that the dismissal of the matter should be set aside because he did not understand the terms of the settlement and that he did not enter into the settlement of his own volition. We hold that he may not.

FACTUAL AND PROCEDURAL BACKGROUND

The pertinent procedural history of this matter is as follows: Appellant and his brother were engaged in a protracted dispute over their respective ownership rights to real and personal trust property formerly owned by their parents, In July 1993, appellant filed a complaint against his brother, Jerome Sherman, and Pat Plascencia[24] (collectively referred to as respondents) for (1) enforcement of an oral trust in real and personal property; (2) establishment of a constructive trust; (3) partition of real property; (4) an accounting; (5) declaratory relief; and (6) breach of fiduciary duty.

Trial was set for February 27, 1995. Appellant represented by John F. Klopfenstein,[25] had lodged exhibits, filed a trial brief, and exhibit list and a witness list prior to trial. Trial commenced as

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[24]Plascencia appears to be a family friend.

[25] Appellant had been represented by another law firm when he filed the complaint. During a brief period after the filing of the complaint he was represented by a second lawyer Klopfenstein was his third counsel of record.

scheduled, on the morning of the 27th. After making some preliminary remarks, the court informed the parties that they would commence with the presentation of evidence the following day and excused them. That afternoon counsel informed the court that the parties had settled the matter and the court agreed to put the settlement on the record. Appellant, respondents and their respective counsel all indicated their agreement to the settlement on the record. The trial date was continued until April 10, 1995, to allow the parties to document the agreement. Klopfenstein then prepared the settlement agreement and presented it to appellant on March 7, 1995.

Appellant signed the agreement, and Klopfenstein filed a request for dismissal of the complaint. On April 26, 1995, appellant, represented by Mark Weidmann, filed a motion to set aside the dismissal pursuant to Code of Civil Procedure section 473 on the grounds that he had been forced to enter the settlement agreement under coercion and duress, without having prior notice that the request for dismissal would be filed. That motion was taken off calendar, and refiled on August 14, 1995, with appellant representing himself. On November 14, 1995, the motion to set aside the dismissal was denied. It is from this ruling that appellant appeals.

1. *The announcement of the settlement*

The record reveals that when the parties appeared on the date set for trail

the court made several comments reflecting a belief that some of appellant's claims were barred but the statute of frauds. The court also commented on the voluminous number of exhibits filed by appellant that it believed were irrelevant, and stated that it would not allow appellant to present additional documentary evidence not specified in the exhibit list.[26]

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[26] The court's comments were as follows: "You know, there is an old saying, Mr. Klopfenstein, something about if you can't dazzle them with brilliance, baffle them with bull. [¶] You must have given me these exhibits here with a thousand pages. You must have dug up every single scrap of paper you could find to put in this exhibit book.[¶]...[¶] You have what appears to be an insoluble problem with the Probate Code on the statute of frauds. You can't have an oral trust. I mean, it's not my ruling; it's the Legislature that says you can't have an oral trust. [¶]...[¶] What you do have is a few properties where if in fact, you have a legitimate constructive trust, you can pursue that. [¶]...[¶] [I]f you can show how a constructive trust can apply,... that's fine. Certainly happy to hear that, as a constructive trust." The following colloquy then occurred: "THE COURT: All right. Where is the evidence? [¶] MR> KLOPFENSTEIN: We have [] checks. Your Honor. [¶] THE COURT: No you don't have checks. You may thing counsel that our court rules are just for filling, but look at Rule 7.9. Even if you ignore my final status conference order, look at Rule 7.9(d), which requires you to submit the documentary evidence in the exhibits. You are not going to bring checks in now that you haven't submitted. I have looked through

The Court continued the matter over until the following morning, but apparently the parties notified the court over the noon hour that they had reached a settlement, and when the court reconvened, it allowed them to enter the terms of the settlement on the record.

The terms of the settlement as announced on the record by counsel for respondents included the following provisions: Respondent Jerome Sherman was to quitclaim three parcels of real property to appellant; appellant was to quitclaim another parcel to Plascencia; appellant was to reconvey other encumbrances on properties, and a mutual agreement of the parties to stay away from each other and mutual release were to be executed. There was also an apportionment of rents and tax benefits. The following colloquy then occurred: "THE COURT: *Okay. Michael Sherman [appellant,] you have heard the terms of the stipulation. I am sure you have understood that. That's acceptable to you? [¶] [APPELLANT]: Yes your Honor. [¶]* THE COURT: Jerome Sherman, you also heard the terms of the stipulation that has been set forth and that's acceptable to you? [¶] MR. JEORME SHERMAN: Yes. [¶]M[S].PLACENCIA: Yes. [¶] [COUNSEL FOR RESPONDENTS]: You Honor, would you ask counsel [for appellant] to stipulate? [¶] MR. KLOPFENSTEIN: So . stipulated, Your Honor. [¶] Okay. The trial

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these exhibits."

date, then, will be vacated. We'll show this as a settled matter. [¶] Who's going to prepare the judgment? [¶] [COUNSEL FOR RESPONDENTS]: *There is not going to be a judgment. There will be a dismissal.* We are going to work together on the settlement agreement and the transfer documents. But we need a come-back date in case something happens. [¶] THE COURT: Yes, you do. How much time do you want? [MR. KLOPFENSTEIN]: Thirty days, Your Honor. [¶] . . .[¶] THE COURT: All right. April 10. I continue the matter to April 10 for disposition. Okay. [¶] *Each of the parties is ordered to assist the other in the preparation of any documents.* The court ... will retain jurisdiction to carry out the terms of the settlement, if that should be. [¶] . . .[¶] [COUNSEL FOR RESPONDENTS]: *If we file a dismissal by then,* we are excused from attending? [¶] THE COURT: Sure. Happy not to have you come back. Now, I caution you to make sure it gets filed directly in this department." (Italics added.)

2. *The motion to set aside the dismissal*

Appellant's motion alleged that (1) on the day trial commenced, he had been told by his trial attorney that he would lose everything if he did not settle the case; (2) his attorney did not inform him of the terms of the settlement until; after the documents had been drafted; (3) he had initially refused to sign the settlement agreement,

then signed them only because he was coerced by his attorney, Mr. Klopfentein and threatened by Mr. DeRoy, attorney for respondents; (4) he had never agreed to have the case dismissed and was completely taken by surprise when he discovered, several weeks later, that the request for dismissal was filed.

In their opposition to the motion to set aside the dismissal, respondents submitted declarations of the various attorneys who were present when appellant signed the settlement agreement, Mr. Klopfenstein and his associate, Michael Polin, representing appellant, and George DeRoy, respondents counsel. All of them denied that appellant had been coerced into signing the agreement. All agreed that appellant was told that the execution of the settlement documents was not dispositive, as he had already agreed to the settlement in open court. Appellant decided to sign the documents after a private meeting with Polin and Klopfenstein. In addition, Klopfenstein stated that appellant never informed him at any time that he did not understand the documents of the nature of the settlement.

At the hearing on the motion to set aside, the same judge who had presided over the trial initially indicated that he was satisfied that appellant had understood the terms of the settlement and saw no reason to set aside the dismissal. He also explained

that the case would have been dismissed whether it was ordered by the court or filed by the parties based upon the settlement. A lengthy discussion then ensued regarding the number of documents appellant had lodged with the court and the petition for review appellant had filed with the Supreme Court. After appellant attempted to bring up the underlying facts of the case, the following colloquy took place: "THE COURT: Now, you be quiet, Mr. Sherman. [¶] What we have is a settlement that was entered into in this court. You were represented by counsel at that time. We set aside a whole day of trial time...[¶] Your lawyer and Mr. DeRoy then entered into a settlement., Based upon my review of the documents that had been lodged ... I though that the settlement that was entered into was rather advantageous to you. [¶] I think your lawyer did a terrific job in the settlement he had because based upon what I had seen you that point from the documents that were lodged for trial you really didn't seen to be entitled to much. I thought your brother was being rather generous. [¶] ...[¶] I thing [your attorney at trial] did a fine job of representing you at the time we were set for trial. I think the settlement he made, based upon all the facts that were then apparent to the court, and what could have resulted after another day of trial, were much to your advantage. I see nothing whatsoever wrong with he settlement. The dismissal that followed -- as a matter of

fact, your were in court. I asked you-- I asked you and your brother both, 'Is the settlement satisfactory to you?' You said 'yes' [¶] [APPELLANT]: I did not understand. There was coercion and intimidation. [¶] THE COURT: Mr. Sherman, just because you tell me that I do not have to believe it. [¶] ...[¶] I am satisfied that you understood the settlement. [¶] [APPELLANT]: I did not. [¶] THE COURT: you told me you did. [¶] [APPELLANT]: I did not. I was coerced. You knew that I was coerced. [¶] THE COURT: How did I know you were coerced? Oh, come on, now, that is an absolute lie. [¶] How did I know you were being coerced? No one was pointing a gun at your. [¶] [APPELLANT]: Practically sir."

DISCUSSION

1. *Contentions on appeal*

On appeal, appellant contends that he was coerced into agreeing to settle the matter by his trial counsel and the trial judge. He claims that his trial counsel Klopfenstein, did not have his authority to enter into settlement nor to agree to the dismissal. He then alleges that he was completely taken by surprise when his counsel presented the settlement agreement documents for him to sign, and only agreed to sign them after "coercive and intimidating statements and actions" by his counsel and respondents' counsel.

On the basis of these allegations, he contends there are grounds for setting aside

the dismissal pursuant to Code of Civil Procedure section 473, and on equitable grounds.

He also claims that the trial court's refusal to accept the volumious documents that he
attempted to introduce both at trial and at the section 473 hearing was reversible error. Finally, he claims that a conflict of interest by respondents' counsel, who was co-counsel to appellant in his divorce proceedings in 1984, is grounds for setting aside the judgment of dismissal.

2. *The trial court's denial of the motion was proper*

Preliminarily, we note that the settlement agreement allegedly signed by appellant is not included anywhere in the record.

A trial court has jurisdiction to vacate a judgment of dismissal under Code of Civil Procedure section 473 where it has been entered as a result of the plaintiff's mistake, inadvertence, surprise or excusable neglect. (*Basinger v. Rogers & Wells* (1990) 220 Cal.App.3d. 16, 21-22) In addition, a court may set aside a final judgment on equitable grounds where there has been extrinsic fraud or mistake. (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579,582.) the decision to vacate a dismissal is one within the trial court's discretion and one which we will not set aside absent a showing that the discretion has been abused.

(*Shamblin v. Brattain* (1988) 44 Cal.3d 474,479: *Rivercourt Co. Ltd v. Dyna-Tel, Inc.* (1996) 41 Cal.App4th 1477.)

Appellant's assent to the settlement in open court could not have been clearer. If he truly did not understood the terms of the settlement, he should have informed the trial court, either at the date of trial, or as soon as he realized he made an error. He did nothing, and then proceeded to execute the settlement agreement. More importantly, appellant informed the court that he agreed to the terms of the settlement and was present when the filing of a request for dismissal was discussed. The record does not support any claim of mistake, inadvertence, surprise or excusable neglect.

Further, the evidence presented does not support appellant's assertion that he executed the settlement documents involuntarily or that his trial attorney fraudulently induced him to agree to the settlement. (*Warga v. Cooper, supra*, 44 Cal.App.4th at p. 377, quoting *Kulchar v. Kulchar* (1969) 1 Cal.3d 467,471.)

In determining whether there is an equitable basis for setting aside the dismissal, some factors to consider are an emotionally weakened condition of the litigant, lack of advice of independent counsel, whether the agreement consented to was grossly unfair, and whether the party seeking to be relieved from performance had no reasonable alternative to succumbing. (Cf.

In re Marriage of Baltins (1989) 212 Cal.App.3d 66,80.) We find none of those factors present here. Appellant was represented by counsel, was prepared to proceed at trial, and presented no evidence of an emotionally weakened condition. Appellant could easily have informed the court that he did not understand the terms of the settlement his attorney had agreed to, or inquired further when respondents' counsel mentioned in open court that the matter would be dismissed. He could have refused to sign the settlement agreements. He could have sought to et aside the settlement after he signed the documents. instead, he did nothing between the period of February 27 and April 26, 1995.

Appellant, having been present in court when the terms of the settlement and the filing of the dismissal were discussed, cannot claim that he was defrauded by his attorney. His claim that he was coerced into executing the settlement documents, is contradicted by the three other persons present when he signed the document. Moreover, he presents no facts indicating an emotionally or financially weakened condition, or that he was limited in his ability to understand the nature of the settlement. To the extent that his claim that his trial counsel deceived him has any basis in fact, his redress is by way of a legal malpractice action.

3. *The trial court's refusal to admit the*

documents as evidence.

The documents lodged by appellant at each stage of these proceedings are related only to the substantive nature of his claims against respondents. They do not bear on the issue of the voluntariness of the settlement. Any remarks by the trial judge regarding the relevance of these documents could not be interpreted as coercing appellant into a settlement.

4. *The alleged conflict of interest of respondents' counsel*

The record contains no facts which support appellant's contention that respondents' counsel, Mr. DeRoy, had prior knowledge of appellant's previous financial situation and used that information in entering into an unfair settlement agreement. In fact, the record reveals that Mr. DeRoy represented respondents from the outset, but appellant never made a conflict of interest claim until the filing of this appeal.

DISPOSITION

The judgment (order denying motion to set aside dismissal) is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED

HASTINGS, Acting P.J.

We concur:
BARON, J.

ARANDA, J.*

*Assigned by the Chairperson of the Judicial Council.

APP. 119

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLANT DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE:

08/01/97

Martin Wolf
433 N. Camden Dr.
Ste 1200
Beverly Hills, Ca. 90210

Re: Sherman, Michael M.
vs.
Sherman, Jerome
1 Civil B098437

THE COURT:
Petition for rehearing denied.

SUPREME COURT. NO.
S061513

IN THE

SUPREME COURT OF CALIFORNIA

MICHAEL M. SHERMAN,
Plaintiff and Appellant,

vs. 2nd Civil No. B098427

JEROME SHERMAN, PAT PLASCENCIA,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR
SUPER. CT. NO. BC085156

OBJECTION TO ORDER DENYING PETITION FOR REVIEW

COMES NOW, the Appellant Michael M. Sherman, hereby objecting to the order in which this Court denied the Appellant's Petition for Review.

This objection is grounded upon the following, to wit:

1. That it is the Appellant's contention that the order is in improper format and as such violates the spirit of Art. 6 § 14 of the California Constitution which requires that all decisions of the

Supreme Court which determine causes must be in writing with reasons stated. To this end it is further the contention of the Appellant that the importance and magnitude of the issues present for review justify "cause" requiring such a writing.

2. Furthermore, pursuant to C.R.C. § 28(f) a Petition for Review may be denied by an Order signed by the Chief Justice and filed with the clerk.

To this point, the Appellant contends that the order is further improper in that the copy he received was not signed but instead stamped with the last name of the Chief Justice.

In light of the errors as outlined herein the Appellant respectfully objects to this Court's order denying its Petition for Review in its present format and requests that a full statement of decision be given duly signed by the Chief Justice.

Dated: /S/ Michael Sherman

Michael Sherman

In support of his Objection the Appellant would respectfully show this Court, to wit:

ARGUMENT

I.

THE ORDER RECEIVED VIOLATES THE SPIRIT OF CALIFORNIA CONSTITUTION ART. 6 § 14

In pertinent part Article 6 § 14 of the California Constitution states that *"[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."*

As applied in the instant case it is Appellant's contention that the case before this tribunal presents an egregious miscarriage of justice that it establishes "cause" as that term is used in Article 6 § 14 of the California Constitution.

In the instant matter this Court was asked to review the appellate court's decision for in its context and application the Appellate felt, and still feels, that his constitutional rights to "due process" had been severely violated, not only once but twice.

The brevity of the situation screams injustice, which has now only been seemingly bolstered by this Court's summary denial of review of such an important and paramount issue.

Is not a party's rights to a fair hearing the very basis and crux of our legal

society? Is this very principal not one that vast amounts of blood have been spilled defending and upholding over the past twelve score years that this nation of ours has been formally in existence?

While the Appellant realizes that this tribunal's decision to review a case is purely discretionary, and not required by the Constitution, he does not feel that such should have been done through a mere four word denial, without explanation.

To this end, in reviewing the case law as it applies to the necessity of a writing, and the judicial interpretation of "cause", it appears that this Court, as well as the lower Court of Appeal, has previously interpreted "determination of cause" in various applications by finding that the term did not apply to Writs of Mandate and Habeas Corpus matters, as in that application the actual decision on the writ did not constitute a determination of cause, and that only after the issuance of the alternative writ did the matter become "cause".[27] However, from a cursory review of the cases regarding judicial interpretation of what constitutes "cause" is generally silent as to the Supreme Court's responsibility as to a decision regarding a review.

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[27] *See* People v. Rojas, *118 Cal. App 3d 278 (1981); In re Mazoros, 76 Cal App. 3d 50 (1977).*

Therefore, the Appellant contends to this Court that given the brevity and seriousness of the issues asked to be reviewed, and the long reaching effects of the position of the Court of Appeal as it applies to the citizens of this state and their individual freedoms regarding access to the Court system and their treatment therein, that the decision of this Court regarding its acceptance or denial of review constitutes a "determination of cause" requiring a writing decision setting forth this tribunal's reasons for denial.

A.

THE SERIOUSNESS OF THE ISSUES ARE SUCH THAT A DENIAL OF THEIR REVIEW SHOULD BE CONSIDERED A "DETERMINATION OF CAUSE"

In the case now before this tribunal the Appellant herein requested a review from a trial court's decision, which was affirmed by the Court of Appeal, which presented not only a departure from the basic principals of the theory behind the ability to set aside a settlement agreement which was derived through deceit, coercion, threats of reprisal, and the instigation of fear, but also in its method and delivery from the trial court, which in the mind of the Appellant constituted a denial of the Appellant's basic constitutional right to "due process" as it related to a hearing before a fair and unbiased jurist.

This basic right of "due process" as it

related to individual freedoms and what on expects from today's jurisdictional process, is an issue that is ever brewing in today's society.

In the instant case not only did the Court of Appeal not follow traditional rulings regarding the liberality of the application of C.C.P. § 473 and the need for reversal in the face of questionable judicial bias, but they also did so in an unpublished opinion.

This problem has been ever increasing. In fact as far bach as December 1995 this growing trend in our judicial system was recognized as a problem.

On December 13, 1995 the Wall Street Journal published an article entitled "Appeals Courts Keep More Opinions Secret, wherein Attorney John G. Kester examined this ever growing problem.

In that article he expressed much of the same concerns which plague us and feed the public's mistrust of the judicial system today.

> *"The dangers are carelessness and manipulation--both by judges and by litigants. Judges should not be the ones to decide which of their opinions get reported and used. The temptation is to bury shoddy reasoning or to tailor results to particular parties. Supreme Court Justice Owen Roberts worried a half-century ago that if precedent*

can be routinely ignored, the law becomes a restricted railroad ticket, good for this day only. We expect out courts to build on prior decisions and to explain why if they don't. If they select some decisions to be secret, or stamp them a second-class nonprecedents- like Orwell's nonpersons-then Judges themselves undermine the rule of law".

The can be no denial that a party's "due process" rights are paramount to our basic judiciary existence. Was this not one of the basis of our entire existence as Americans? is not the treatment, which the Appellant has related in the instant matter, synonymous with that of English citizens in the 17th and 18th century which promoted our very own American Revolution? Has our system gotten so big and overloaded that we have forgotten the very premises upon which our system of justice is based?

In the instant case, the issue presented dealt with a double infringement of the Appellant's rights.

In the first instance the Appellant was forced and coerced into settling a case involving a family trust consisting of approximately 57 pieces of real property and countless articles of personal property with an estimated value in excess of $15,500,000.00 (Fifteen million, five hundred thousand dollars), by his previous attorneys

who discovered only too late that they had ill prepared the case trial. As a result of the settlement the Appellant lost all the properties with the exception of three properties which in their dilapidated, unsanitary condition where a liability and not an asset with earthquake damage.

In that aspect the Appellant as set forth numerous times on this case, expressed forcefully that he did not want to settle the case, but instead "wanted his day in court".

In its basic premise, it has been held that "*a client's right to reject a settlement is absolute. To hold otherwise would deprive the client of his due process right to proceed to trial on the merits.*" *Estate of Falco, 188 Cal. App. 3d 1004, 1018 (1987).*

Hence, in their denial of their client's wishes not to settle the instant case, the Appellant's previous counsel threatened, intimidated and coerced the Appellant into the instant settlement, depriving him of his Basic right to try the matter on its merits.

However, the Appellant utilized one of the stop gap measures enacted by the California legislature to undue this wrong and proceeded to move the Superior Court to set aside the settlement under C.C.P. § 473.

However, his faring before the Superior Court of the motion resulted in yet another deprivation of his basic rights.

The second instance occurred at the hearing on the matter where he is almost

summarily dismissed by the trial judge, after an unsuccessful attempt to recuse the same judge.

To this end, the Court in *Estate of Buchman, 123 Cal. App. 2d 546 (1954) found:*

> *"When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly, and deliberate method by which matters are litigated. **To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly."** Ibid @ (Bolding has been added for emphasis)*

As set forth this plainly was not the case, for the Appellant received anything but a fair and unbiased hearing.

Hence, as set forth, this case screams injustice and is just the type of case that has prompted the current day concern over judicial ethics.

Given the method in which it was handled this tribunal must give its reasons for denying its review so that this will not merely become a statistic or another case supporting the public's concern.

II.

THE ORDER IS NOT IN COMPLIANCE WITH C.R.C. § 28(f)

In furtherance SHERMAN objects to the form of the denial order in that it appears to be non-compliatory with the provisions of C.R.C. § 28(f).

In pertinent part C.R.C. § 28(f) that *"[t]he denial of review may be evidenced by an order signed by the Chief Justice and filed with the Clerk."*

In the instant matter the summary order received by SHERMAN denying review of the instant case, besides being a four word denial without explanation, was not signed by instead stamped with the name GEORGE.

In and that the copy of the Order received by SHERMAN was not signed, but stamped, the Appellant now questions the overall validity of the Order itself.

Was it reviewed by the Chief Justice? Was the Order denying said review actually signed by the Chief Justice as required?

As such the Appellant objects to the Order as given as being non-compliantory with the provisions of C.R.C. § 28(f) and hereagain asks that the same be re-reviewed and the proper order given.

CONCLUSION

As herein outlined the Appellant feels that this Court did not give the instant matter the proper consideration that the instant case, and the situation, screams for. Injustices such as the ones perpetrated upon the Appellant, innocently or not, at the hands of our present day judicial system should not be tolerated by this or any other tribunal charged with the responsibility of upholding the public's rights outlined in the Constitution. Given the fact that not only was the order issues a summary order without a written decision, but also stamped, the Appellant feels that the issue presented were not taken seriously and/or just given a cursory review without the weighing of the long reaching ramifications of the lower court's actions.

As such, any faith in the judiciary system as being the one arena where the ends of justice are protected, once harbored by the Appellant, have been severely thrashed.

In filing this objection the Appellant requests that if this tribunal chooses to deny review that this tribunal outline the basis for said decision.

Dated: /S/ Michael Sherman

Michael Sherman

SUPREME COURT. NO. S061513
IN THE
SUPREME COURT OF CALIFORNIA

MICHAEL M. SHERMAN,
Plaintiff and Appellant,

vs. 2nd Civil No. B098427

JEROME SHERMAN, PAT PLASCENCIA,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR
SUPERIOR CT. NUMBER BC085156

REPLY TO ANSWER TO PETITION FOR REVIEW

COMES NOW, The Appellant Michael M. Sherman, hereby presenting his Reply to the Answer to Petition for Review, heretofore filed by the Defendants and Respondents, Jerome Sherman and Pat Plascencia, to wit:

INTRODUCTION

Pursuant to the provisions of C.R.C. § 28(d) a Reply to a Answer to a Petition for Review may be filed only if the Answer raises new issues for review.

While the Answer herein does not in its initial appearance directly raise new issues, it does in its content, raise two new issues which must herein be addressed.

The first issue is Respondent's claim

of purported misstatements which allegedly disqualified the Appellant for relief at the lower court; and secondly the Appellant's purported non-compliance with C.R.C. §§ 28 (e) (2), (3) and 29 which should deny him the review so desired of this Tribunal.

In reviewing the Respondents' Answer although intricately guised as a "stifled yawn" per se, the underlying gravamen appears to be more of an alleged "character assassination" of the Appellant rather than a theoretically persuasive Answer to the Appellant's Petition, for in the actual body of the Answer the Respondents fail to advance any persuasive legal theories against the Appellant's position, but instead attempt to point out that the Appellant has allegedly mis-characterized the facts and that the Petition, for in the actual body of the Answer the Respondents fail to advance any persuasive legal theories against the Appellant's position, but instead attempt to point out that the Appellant has allegedly mis-characterized the facts and that the Petition is procedurally improper.

The Reply therefore, replies directly to those issues, to clear the smoke and remove the mirrors so that this Tribunal may address the true issues before it.

ARGUMENT

I.

THE RESPONDENTS ANSWER FAILS TO ADDRESS THE ISSUES BUT INSTEAD MAKES ISSUE WITH PURPORTED FACTUAL

MISSTATEMENTS AND PROCEDURAL ERRORS WHICH SHOULD HAVE NO EFFECT UPON THIS TRIBUNAL'S DECISION

In the case now before this Tribunal the Appellant requests review from the lower court's decision, which, as affirmed by the Court of Appeal, presents not only a departure from the basic principles of the theory behind the ability to set aside a settlement agreement, but also in its method and delivery from the lower court, a denial of the Appellant's basic Constitutional Rights to due process, as well as his Civil and Human Rights, as it relates to a hearing before a fair and unbiased jurist.

In their Answer the Respondents' attempt to raise three points which in their opinion should dissuade this Tribunal from reviewing this case, two of which are not actually issues.

A. THE APPELLANT'S PURPORTED MISSTATEMENTS AS ALLEGED BY THE RESPONDENT

The first issue raised by the Respondent was that the Appellant has allegedly misstated certain facts relating to the case, such as the existence of a Trust, the nature of the court appearance on February 27, 1995, the allegation regarding Respondent's counsel, the omission of the fact that the lower court judge denied the side bar communication in his Answer to the State of Disqualification, and to the conduct of his own attorneys.

Why is this set forth as an issue, and how is it applicable to the true issue of whether or not the lower court abused its discretion in denying the §473 motion, or denied the Appellant's Constitutional due process rights in its conduct and tenor at the hearing thereon? The simple fact is that it does not. The facts surrounding the events prior to the hearing and during the actual hearing on the §473 matter have never been disputed by the Respondent or addressed by the Court of Appeal, except as the alleged actions of the Appellant's previous attorneys which brought forth the basic premise for the motion itself.

However, for the sake of this reply the Appellant will address herein these specific alleged misstatements.

As to the alleged Trust, this point has been belabored in the record as well as addressed in the briefs. The record herein reflects a multitude of documents and transactions, encompassing several decades, involving Family Trust transactions, all of which lend credence to Appellant's position, but this is an issue for trial, and has no bearing here.

As to the purported mis-characterization of the proceedings, this again has little bearing on the issues presented before this Tribunal. The fact still remains that as a result of what the Appellant has contended as the poor and negligent performance of his previous counsel

in their preparation for trial, which became never more apparent than that fateful day in court on or about February 27, 1995, when the Appellant was forced, intimidated and coerced into settling a case with threats of reprisals that he did not want to settle by his attorneys who apparently realized their error. This point is even uniquely characterized by the lower court judge in his unsolicited statements at the hearings to set aside the settlement when he stated, in essence, that given the facts that were before the court at that time the settlement was a good one. Taken in the context as they were spoken, coupled with the errors pointed out at the hearing/trial as reflected in the February 27, 1995 transcript, the facts so referred to were probably a very poorly presented case in which any settlement in which the Appellant obtained anything was advantageous. Whether or not the February 27, 19995 court appearance was a final settlement conference, or the first day of trial is of little significance, as the events which transpired and the actions of both by the lower court and by the Appellant's counsel still happened and it is those actions that are a issue here, not the nature of the appearance.

As to the "unfounded and erroneous" allegation that the Respondent acted as "co-counsel" for the Appellant during his divorce, the Respondents's counsel fails to address the underlying issue. The underlying

fact is that the Respondent's counsel represented the Respondent and the Trust properties and interests during the Appellant's divorce during 1983-1984 in an effort to protect the Appellant's interests in the Trust properties and interests from attack from the Appellant's former wife. This fact has yet to be denied. As a result of, and in conjunction with said representation, certain unofficial documents were prepared by the Appellant's divorce attorney, in conjunction with Respondent's counsel, albeit never filed, in an effort to protect these Trust properties from any characterization, by the Appellant's former wife, as community property, thus preserving the integrity of the Trust's interest. Miraculously these documents, long since forgotten by the Appellant, surfaced during the instant proceedings, and used to establish the Appellant has in some way disinvowed any interest in the Trust properties.

Lastly, as to the conveniently omitted denial of the lower court judge in his Answer to the Statement of Disqualification of the side bar incident outlined by the Appellant, this is clearly in the record, as the Answer was designated in the Superior Court transcript. Interestingly, while this "side bar" has been a source of heated debate, which oddly enough is not reflected in the transcript of February 27, 1995, either by being on the record, or in reflecting that the proceeding went off the record, this side

bar conversation was admitted by Judge Ross as taking place[1]; However, Judge Ross as well as the Respondents denied the Appellant's version of its content.

Interestingly, however, the Respondents eluded, in their own opening brief on this appeal, in the statement of facts which the Respondent stated was uncontradicted, to the fact that after trailing the matter until 10:00 a.m. the next morning February 28, 1995, the court indicated to the parties that they should consider settlement. [Respondents' Brief, Page 4, ln 9-11][2].

B. THE APPELLANT'S REFUSAL 'TO PLAY BY THE RULES"

The second issue raised in support of their position deals with the purported allegation that the Appellant in his Petition did not brief or concise and did not set forth any reasons as outlined in C.R.C. § 29 was the case should be reviewed by this Tribunal. However, in making such an allegation they fail to support such an issue. Where is the Petition lacking? In its length.

At what point is brevity a deciding factor? Certainly when a document rambles with dictumous statements, it can certainly be said that the document lacks in

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[1] CT Vol II, Page 210, ln 1-8

[2]Coincidentally this time frame coincides with the time frame suggested by Judge Ross in his comments.

concisiveness; but when the case, as in the instant matter, involves a multitude of facts which support an ongoing saga which supports and demonstrates the allegations, should brevity be deciding if the document though not brief is concise in its content.

Further to this point, in conjunction with the filing of the instant brief with this Tribunal, the Appellant filed a request with this court to accept the ten extra-page brief, and explained therein the reasons for its special length in this particular case. If the Respondents took issue with the purported special change in size and alleged lack of concisiveness, why didn't they oppose the Appellant's request? Hasn't the Respondents waived their right to make this an issue by not opposing such a request within the prescribed time frames? Why make this an unsupported issue now?

The fact is the Respondent cannot deny the concisiveness of the Petition. It is neither an attempt to re-argue the underlying issues or re-try the case, but it sets forth the precise reasons why this Tribunal should review this case.

Secondly the Respondents complain that the Appellant in its Petition "did not even pay lip service" C.R.C. § 29.

In pertinent part that a review by the Supreme Court, of a Court of Appeal decision, will be ordered:

1. Where it appears necessary to secure uniformity or the settlement of

important questions of law.

This Court's attention is drawn to the Appellant's petition for Review which specifically outlines that:

> "The Supreme Court's purpose is to decide important legal questions and maintain statewide harmony and uniformity in decision. *People v. Davis, 147 Cal. 346, 348 (1905); see also Sup. Ct. Prac. & Proc. § I, page 1*

In and that the gravamen behind the Appellant's request is that the Court of Appeal's decision violates case law as it applies to the setting aside of stipulations, and further, that the actions of the lower court violated the Appellant's Constitutional Rights to due process and his Civil and Human rights. Are Not these "important legal questions"?

At the lower court level as well as on appeal, the Appellant cited numerous cases which supported his position which set forth standards for setting aside a settlement agreement, which the Court of Appeal's affirmation of the lower court order flies in the face of.

Is not review here justified to "maintain statewide harmony and uniformity in decision"? The response can only be "yes".

C. WHY REVIEW IS NECESSARY

What the Respondent fails to address in his Answer is perhaps the most blazing reason for this Court's review, and that is to find

out whether or not the Appellant has suffered a deprivation of his Constitutional due process rights, in the action below, and confiscatory multi-million dollar loss of his private property.

Oddly enough the main crux of the Appellant's position is not addressed by the Respondent, instead the Respondent relies and makes issues of non-relevant factors, evidently in an effort to dissuade this Court from taking review by camouflaging the true issues behind a facade of non-existent procedural errors.

As outlined in the Appellant's Petition before this Court, the Appellant herein is, as he conceives it, a victim of a legal "system" that is more interested in procedure that the protection of a party's Constitutional due process rights, as well as his Civil and Human Rights.

The "system:, at least as it applies in the instant case, may possibly violate one of the very premises of the Constitution, and that is a party's right to a fair hearing before a fair and unbiased jurist.

In the instant case the Appellant contends that the lower court judge, Judge Ross, demonstrated at the hearing such obvious prejudice, bias, impatience, and antagonistic tenor of the proceedings that it infringed upon his Constitutionally guaranteed rights of due process, and with a fair and unbiased hearing, and protection and preservation of his personal property.

Further to this point, the Appellant contends that the lower court judge consistently ignored crucial, unimpeachable evidence and documentation lodged in his case with the lower court, and on many occasions allowed the denial of crucial material by his own court clerk with some choice words against Appellant being said to Mr. John P. Daniel, the Appellant's courier-messenger.

Appellant further feels that Judge Ross may have displayed utter contempt, antagonism, bias, and prejudice, toward him and case in essence denying him his Constitutional rights for justice, the truth. equity and fairness.

Further, Appellant feels that this jurist displayed favoritism toward the opposing attorney, George DeRoy, and the Defendants, Jerome Sherman, and Mrs. Pat Perdue Plascencia. Because of Judge Ross' actions and permissibility, Appellant contends that together with the full force of the opposition and the litagatory defendants, Jerome Sherman and Mrs. Pat Perdue Plascencia, may have possibly "crossed the line" of misconduct and alleged purported improprieties comprising of, but not limited to, alleged misrepresentations, major fraud, conspiracy, perjury, alterations of official court reporter's transcript; critical evidence and documents being ignored, barred, suppressed, and denied (<u>over twenty-six (26) confirmed instances of denial</u> by the courts); obstruction of justice, illicit enrichment,

burglary, all allegedly interrelated, and purportedly tolerated by Judge Ross from the opposition and the Defendants, Jerome Sherman, and Mrs. Pat Perdue Plascencia; resulting in a gross miscarriage of justice and denial of his basic Constitutional, Civil and Human Rights, as well as gross injustice and errors, and the loss of a multi-million dollar Estate Trust involving 56-57 real estate and personal properties in California and New York with certified equity valued in excess of Fifteen and One Half Million Dollars ($15,500,000.00), exclusive of all personal property, for over sixty (60) years and continuing to date. This, unless corrected, would be considered an affront to the very integrity and reputation of the judicial proceedings in the State of California.

It should be noted that, currently, both the California State Bar and the California Real Estate Board, Los Angeles, California, have this case under internal review and investigation.

There can be no denial that, from the facts as presented, the Appellant has been denied his basic Constitutional Rights, as well as his Civil and Human Rights, and as such this case screams for approval of Appellant's Petition for Review.

Dated: June 11, 1997 Respectfully Submitted

/S/ Michael M. Sherman

Michael M. Sherman

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1888 Century Park East, Los Angeles, California 90067.

On June 12, 1997 I served the following document(s) described as REPLY TO ANSWER TO PETITION FOR REVIEW on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

GEORGE DeROY, ESQ.
HOCHMAN, SALKIN & DeROY
9150 WILSHIRE BLVD., STE 300
BEVERLY HILLS, CA 90212-3414
SUPERIOR COURT
DEPARTMENT 39
111 N. HILL ST
LOS ANGELES, CA 90012
CALIFORNIA COURT OF APPEAL
300 S. SPRING ST., FL 2
LOS ANGELES, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 12, 1997, at Los Angeles California.

/S/ Ruben Nordstrom

PROOF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in he County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1888 Century Park East, Los Angeles, CA 90067.

On November___, 1997 I served the following document(s) described as PETITION FOR WRIT OF CERTIORARI on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

GEORGE DeROY, ESQ.
HOCHMAN, SALKIN & DeROY
9150 WILSHIRE BLVD., STE 300
BEVERLY HILLS, CA 90212-3414
SUPERIOR COURT
DEPARTMENT 39
111 N. HILL ST
LOS ANGELES, CA 90012
CALIFORNIA COURT OF APPEAL
300 S. SPRING ST., FL 2
LOS ANGELES, CA 90013
CALIFORNIA SUPREME COURT (5 COPIES)
300 S. SPRING ST., FL 2
LOS ANGELES, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November___, at Los Angeles,_California.

New Address
& Telephone #) Michael M. Sherman
23777-9 Mulholland Highway
Calabasas, CA 91302
Telephone: 818-5918567

May 11, 1998

Los Angeles County Sheriff
Real Estate Forgery &
Fraud Unit
11515 South Colima Road, Room 104
Whittier, CA 90607

Dear Sirs:

Please find enclosed some partial documentation on a civil court case involving against me an egregious case of real estate fraud, forgery and miscarriage of justice.

I was referred to your office by the County of Los Angeles Department of Consumer Affairs, Real Estate Fraud and Forgery Program, 500 West Temple Street, Room B-96, Los Angeles, California 90012-9553.

Should you require any additional information, documentation, etc., please do not hesitate to contact me at my new Calabasas address and/or telephone number.

Sincerely yours,
\S\
Michael M. Sherman

Enclosures:

1. Letter to Kenneth T. Caruth, Esq., Deputy Commissioner III, Department of Real Estate, 107 South Broadway, Room 8107, Los Angeles, California 90012; Reference: Jerome Sherman real Estate Broker, (Mrs.) Pat Perdue Plascencia, Real Estate employee. Case : Jerome Sherman/Mrs. Pat Perdue Plascencia PC#195-0410-010

2. Due to the Real Estate Fraud & Forgery and egregious real estate misconduct, I had submitted the enclosed Petition for Writ of Certiorari (Review) to the United States Supreme Court, Washington D.C.

3. Request for Reconsideration of Order Denying Review of Decision By State Bar of California.

SEAL NOTED

CITY HALL, Room 281
Los Angeles, CA 90012
(213) 485-3486
(213) 485-8988 Fax

LAURA CHICK
CITY OF LOS ANGELES
COUNCILMEMBER, THIRD DISTRICT

DISTRICT OFFICE
19040 Vanowen Street
Reseda, CA 91335
(818) 756-8848
(818) 756-9179 Fax
TDD (818) 345-6624
Email Address:
lchick@C03.ci.la.ca.us

APRIL 5, 1998

MR. MICHAEL M. SHERMAN
23777-9 MULHOLLAND HIGHWAY
CALABASAS, CA 91302-2716

Dear Mr. Sherman:

Enclosed you will find the packet of information regarding your legal matters that you recently gave to Councilmember Laura Chick at a community meeting.

As an elected official of the City of Los Angeles, Councilmember Chick has a long standing policy not to intervene in personnel

or legal matters. It appears that you have taken all the proper steps to appeal this matter, and I am confident that your case has been reviewed and the appropriate actions have been taken.

As you know, our office has no jurisdiction over this matter and I regret that we are unable to offer you any assistance.

Sincerely,

\S\

ERIC ROSE
District Director

CASE OF MICHAEL M. SHERMAN

10/15/97

October 15, 1997

Legal Summary of Michael M. Sherman v. Jerome Sherman, Pat Plascencia

February 1938 to February 1961 Eva and Nathan Sherman acquired and accumulated various real and personal properties and/or other assets in New York and California. They jointly and orally agreed to establish the Sherman Family Trust for the benefit of their three sons, Marvin, Michael and Jerome, all total valued in excess of $15.5 millon dollars. After their father's death, their mother operated the family business in New York and in Los Angeles with the aid of her sons.

May 22, 1982 Eva Sherman passed away. Up until then, Jerome Sherman, with the aid of his salaried bookkeeper and companion, Mrs. Pat Plascencia, tried to gain total control over the Sherman Family Trust which had been in existence for over sixty years. Induced and coerced by fraudulent transfer and misrepresentations. Eva Sherman as she lay on her deathbed was coerced by Jerome and Plascencia to transfer all her interest in real property to Jerome Sherman solely for his own benefit, without informing his two other brothers. As temporary manager of the

estate, Jerome Sherman transferred the properties and assets into a secret living revocable trust in the name of Mrs. Pat Plascencia who subsequently denied the existence of any family trust and claimed the properties as her own.

During this time period without knowledge of the actions taken by Jerome Sherman, Michael Sherman appointed attorneys, John F. Klopfenstein and Michael R. Polin, to represent his affairs and interest in settling the estate. Upon returning to Los Angeles from working abroad in Mexico City, Michael Sherman learned of the loss of his rights and financial interest in the family's estate, which included hundreds f thousands of dollars of his own personal funds that were contributed by him over a thirty year period, as well as actual contracting labor and improvements toward the development of the trust properties in New York, and California.

July 15, 1993 Michael Sherman commenced the instant case against Jerome Sherman and Patricia Plascencia. He sought to enforce the oral trust in real and personal property, establish a constructive trust, a breach of fiduciary duty by Jerome Sherman as trustee, a partition of the real estate, an accounting and declaratory relief for damages.

February 27, 1995 The litigation was finally set for trial before the Honorable Edward M. Ross in Department 39, of the Superior Court, Los Angeles to gain

affirmation of his rights to an equitable distribution of his share of the family's properties and assets. As a foreign service officer for the United States, Michael Sherman dedicated his life to actively supporting principles of American democracy in foreign countries. As a career member of the State Department for over thirty years until his retirement he fought for human rights and democracy in foreign countries. He was confident that no such battle had to be done in our own court system. He sincerely believed that his attorneys would prevail in the courtroom.

The assets and properties were valued by a reputable and neutral accounting firm. After the determination of values by Michael Sherman and Jerome Sherman, it would seem all that was needed was an equitable distribution of the financial assets. However, this did not happen.

Mr. DeRoy, the defendants' attorney, decided on his own what the settlement should be without consulting Michael Sherman and presented it for acceptance to Judge Ross, a personal friend of his. Furthermore, there was a conflict of interest since Mr. Deroy, now opposing counsel, was Michael Sherman's counsel for the various trusts during his divorce case in 1983 and 1984 in Los Angeles.

Judge Ross demonstrated his own opinion of the case, stating with regards to the trial length: "...I think maybe a half hour is a more realistic time estimate. You know

there is an old saying Mr. Klopfenstein something about if your can't dazzle them with brilliance, baffle them with bull. You have given me these exhibits here with a thousand pages. You must have dug up every single scrap of paper you could find to put in this exhibit book", Mr. Klopfenstein offered additional one but Judge Ross responded "No you don't. No you don't. If they are not in the exhibit book that's been submitted, you don't have any..." Judge Ross refused to admit into evidence checks written by Michael Sherman toward these trust properties. When Mr. Klopfenstein mentioned he had more evidence in the trunk of his car, the judge responded "leave it in the trunk of your car". This was taken out of the court transcript.

Virtually all of the evidence presented at trial substantiating a settling aside of the settlement agreement was either denied and/or barred due to his attorneys' negligence. They failed to review any documents given to them by their client, they did not submit any evidence to the court given to them by their client, nor did they depose any of the defendants for trial. They were completely unprepared and failed to follow court rules for the filing of exhibits. Moreover, Mr. Klopfenstein refused to allow Marvin Sherman and his wife to testify as witnesses.

Then, at a side bar, held off the record, Michael Sherman overheard Judge Ross

advised his attorneys that in his opinion Michael Sherman didn't have a case and that the parties should settle, that he should accept willingly what he was left with, three earthquake damaged properties of the fifty-seven properties now controlled by Jerome Sherman and Mrs. Pat Plascencia. This side bar all began by Mr. Klopfenstein who said "we have a settlement" without permission of his client and inexplicably omitted from the official court reporter's transcript and during morning session of February 27, 1995.

Furthermore, Michael Sherman's attorneys grossly mishandled the administration of the case. They improperly met with the defendants attorney, George Deroy, before their first appearance in court. Then, during the court's lunch hour, both Michael Sherman's attorneys and defendants' attorney collectively coerced Michael Sherman to settle. They continually intimidated him, reminding him of what Judge Ross had stated in court regarding the merits or lack thereof of his case and threatened that if he did not settle, he would lose everything. After months of being assured that his side of the story would come out in court and that he would have a jury trial, his attorneys had given up on him and were looking for the fastest way to get out and get paid. With no one else to rely on, he had no choice but to yield to Mr. Polin and Mr. Klopfenstein's pressure.

Mr. Sherman was in shock that his own

attorneys had ignored his pleas for justice and were pushing on him the best interests of the defendants. He was faced with two options-accept the bone, or get nothing. Upon reentering the court that afternoon, under the influence of his own attorneys and defendants attorney, Mr. Sherman succumbed to the pressure against him and unknowingly gave away all rights he had to his inheritance. He accepted the settlement not of his own volition.

Honorable jurists in the United States find that undue influence consists of acts which amount to an abuse of power and an abuse of discretion whenever circumstances and conditions demand that the victim submit to the will of another. In this case, Michael Sherman was subjected to undue influence, by methods which go beyond mere persuasion. He was threatened to accept the settlement or receive nothing not only by the opposing attorney, but by his own attorneys and the judge of the Superior Court of Los Angeles. He was rendered legally incapable of acting on is own motives and his free agency was destroyed.

March 6, 1995 After trial, Mr. Polin's pressure on Mr. Sherman to end the case was unrelenting. Mr. Sherman was in Mexico for work and relied upon his counsel to review and discuss any documents with him. When Mr. Sherman asked questions to find out alternatives to settling, Mr. Polin threatened to drop his case altogether. He

also refused to seek a delay in signing the settlement agreement, which Mr. Sherman repeatedly requested, including 6 times by voice mail calls to Mr. Polin.

Mr. Polin in a letter to Mr. Sherman threatened that the settlement must be signed the following day at Mr. Deroy's office. Otherwise, there would be serious reprisals against Mr. Sherman by Judge Ross and Mr. Deroy. He told Mr. Sherman that Mr. Deroy would then proceed to court and get a judgment entered anyway and the judgment would not offer any "of the protection that this settlement agreement provides for as there will be no settlement agreement to record, on a judgment."

March 7, 1995 Defendants' counsel prepared the settlement agreement and demanded that Michael Sherman execute the document but he protested and refused to sign, as he stated to both his counsel nd defendants' counsel, he did not think that the terms of the settlement agreement were fair and just. Furthermore, he refused to sign because he did not have an opportunity to review this voluminous stack of documents. Then both his own attorneys and opposing counsel warned Mr. Sherman "If you don't sign now, you will lose everything...you don't deserve anything anyway, and if you don't sign immediately "Mr. Deroy threatened "I will immediately obtain a judgment against you today.

It became clear to Mr. Sherman that neither of his attorneys actually read the settlement papers and at no time did they verify the contents of it. Furthermore, they did not prevent Mr. Deroy from speaking directly to Mr. Sherman nor from threatening Mr. Sherman during the meeting. Parties intentionally used threats and pressure to induce action by Michael Sherman to his detriment. Prior to signing, he did not have a chance to even review or have knowledge of the contents of the full settlement agreement and any of the property transfer documents. Mr. Sherman's execution was not of his own volition.

March 14, 1995 Defendants' counsel filed a Request for Dismissal, which asked the Court to dismiss Mr. Sherman's claims of prejudice. Without Mr. Sherman's knowledge his own counsel executed this Request for Dismissal. At no time had Mr. Sherman ever advised his legal counsel or anyone that he desired to have his claims against the defendants dismissed with prejudice.

April 5, 1995 Mr. Sherman learned with great surprise and dismay that the action had been dismissed with prejudice by his own attorney, Mr. Klopfenstein. At no time prior to this was Mr. Sherman advised by anyone or became aware that his claims were to be dismissed.

May 11, 1995 Mr. Polin sent a letter to Attorney Stewart, menacing him with adverse financial and state bar consequences if he

did not discontinue forthwith his legal action on behalf of his client, Michael Sherman. Also Mr. Klopfenstein sent a letter to Attorney Stewart threatening him with serious reprisals if he did not discontinue representing Mr. Sherman. "I believe you are going to lose on all counts and you are going to get yourself in a lot of trouble not only with the state bar but you're going to get in a lot of trouble financially because I can tell you that I know Michael Polin is not very happy about this and you know we are going to come after you with great guns, and I just want to warn you that you know you're really getting yourself into a beehive and you might want to reconsider..."

June 1, 1995 Mr. Sherman filed complaints with the California State Bar against Mr. Klopfenstein and Mr. Polin for their lack of representation. In his complaint, Mr. Sherman states that Mr. Klopfenstein and Mr. Polin claimed that they "got along very well" with the defense counsel, Mr. Mr. Deroy. And after intense intimidation experienced by them together, he suspected that his legal counsel were somehow affiliated with or unduly influenced by Mr. Deroy. This obvious conflict of interest became much more clear when Mr. Klopfenstein indicated that he might be using Mr. Deroy to assist him in defending Michael Sherman's malpractice suit against him.

August 11, 1995 Mr. Sherman filed a Motion to Set Aside the settlement and the

dismissal but did not feel as a result of predisposed opinion demonstrated by Judge Ross off the record toward the issues in his case and after an unsuccessful attempt to recuse this judge that he would be able to receive fair and unbiased treatment before him.

August 17, 1995 Mr. Sherman filed a continuation of his complaint to the California State Bar and stated that Mr. Stewart is no longer acting in his best interests. He believed Mr. Stewart was either solicited or accepted money from or in another way was influenced by defendants counsel.

August 30, 1995 Mr. Sherman filed a Verified State of Disqualification of Judge in requesting the Honorable Edward M. Ross be removed from the instant case. Judge Ross expressed his predisposed opinion as to Mr. Sherman that sufficiently demonstrated a serious bias and prejudice so as to impair his impartiality so that it appeared probable to any person that a fair trial could not be held before him.

September 29, 1995 The Honorable Theodore E. Millard, Assistant Presiding Judge of Orange County Superior Court sitting on assignment by the Judicial Counsel of Los Angeles County denied the Verified Statement of Disqualification of Judge, premised on the Court's findings that the statement was untimely and that the comments complained upon were during the course of Judge Ross

discharging his duties to rule on motions. However, the statement went well beyond the simple discharging of duty by Judge Ross..

October 10, 1995 Mr. Sherman filed his Petition for Writ of Mandate with the Court of Appeal, Second Appellate District, Division 4.

October 31, 1995 Petition for Writ of Mandate was denied by the appellate court.

November 8, 1995 Mr. Sherman filed a Petition for Review with the Supreme Court of California to stay the hearing on the matter pending a decision regarding Judge Ross, premised upon Judge Ross's deprivation of Mr. Sherman's constitutional rights of due process, as well as his civil and human rights to a fir hearing. Prior to the hearing Mr. Sherman prepared extensive documents consisting of approximately six (6) volumes to support his position and sent the same to the lower court for lodging. On the first attempt the documents were denied by the judge's clerk in Department 39. On the second and third attempts, Judge Ross' clerk continuously refused to give her surname, even her first name, and further refused to accept the documents stating to the courier some rather slanderous words against Mr. Sherman regarding his attempts to disqualify Judge Ross. Finally, on the fourth attempt the volumes of critical evidence were lodged, however, returned to Mr. Sherman at the November 14 hearing evidently unread. Before the hearing, Mr. Sherman went to the

courthouse and asked to see these volumes that were lodged, but they were hidden and kept from him.

November 13, 1995 Petition for Stay was filed with the California Supreme Court.

November 14, 1995 At the hearing on Mr. Sherman's Motion to Set Aside Judgment, Judge Ross refused to continue the matter despite being advised of the Petition for Stay and the Petition for Review filed with the Supreme Court. Judge Ross appeared frustrated, impatient, and generally unwilling to consider any of Mr. Sherman;s statements. This demeanor could have been caused by Mr. Sherman's prior attempts to recuse this trial judge, for it was certainly discussed at the beginning of the hearing when the trial judge refused to continue the matter. Yet such is the risk assumed when one attempts to disqualify a judge.

Six volumes were lodged with lower court which included state bar complaints which were directly relevant because it demonstrated the actions of his former attorneys at the hearing, the very actions outlined as grounds in the Motion to Set Aside Judgment. Judge Ross before even getting into the motion itself made it a point to return these critically important evidentiary documents that had been lodged with the Court, stating "I will give you back that bid box of documents that your lodged with the Court...those documents have nothing whatsoever to do with whether or not we

should set aside the settlement that you entered into". The Court denied Mr. Sherman's motion without even allowing presentation of argument or evidence supporting the motion.

In the prior hearing on February 27, 1995, Judge Ross criticized the attorneys for various errors in the entrance of evidence and lack of legal grounds for recovery sought. Totally contradicting his previous admonishment of Mr. Sherman's prior counsel, Judge Ross made an unsolicited and unsubstantiated finding of fact that his previous counsel did a fine job in the representation and in making the settlement. This harmed Mr. Sherman in subsequent malpractice actions be brought against these attorneys and their actions against him for alleged unpaid final fees. "I think your lawyer did a terrific job in the settlement you had because based upon what I had seen up to that point form the documents that were lodged for trial you really didn't seem to be entitled to much. I thought your brother was being rather generous...In fact, I am going to make a finding of fact that your attorney, I think, did a good job, did a very fine job of representing you (referring to Mr. Klopfenstein)...at the time were set for trial. I think the settlement he made, based upon all the facts that were then apparent to the court and what could have resulted after another day of trial, were much to your advantage." He added "your settlement was extremely advantageous to you, in my

opinion...you completely want to overlook the 1983 settlement..." which was obtained fraudulently.

Mr. Sherman Explained that he did not understand the settlement agreement and that he was coerced into it. At one point, when attempting to get into the underlying facts Judge Ross even went so far as to state "No,no. Let's not get into the facts." Judge Ross responded, "No one was pointing a gun at you. "Consequently, the Court denied the Motion to Set Aside Judgment.

August 8, 1996 Request for Reconsideration of Motion to enter additional evidence on appeal in support of petition filed September 5, 1995.

August 28, 1996 Mr. Sherman's Request to receive additional evidence on the appeal consisting of the declaration of John P. Daniel, the commercial courier who attempted the initial lodgment was denied. The request for reconsideration of the denial was also denied.

November 19, 1996 Another appeal filed before the Second Appellate District, Division 4, as the trial court erred and abused its discretion in denying the motion for there existed more than ample evidence which supported the motion to substantiate setting aside the settlement agreement and the dismissal with prejudice.

February 27, 1997 Again, appeal filed and denied.

May 1, 1997 Petition for rehearing denied again by Court of Appeals.

June 12, 1997 Again Appeal denied.

June 25, 1997 Petition for review by Supreme Court of California denied.

July 1997 Consequently, Michael Sherman sought professional help from a physician as a means to alleviate the extreme emotional distress that eventually set in. Dr. Kappler, in writing provided detailed analyses of the trauma and anxiety Michael Sherman has endured as a result of all the events that occurred in his life after the death of his beloved mother. After three years of treatment, Dr. Kappler concluded that Michael Sherman was without mental capacity at the time of settlement. He was rendered vulnerable. "This phenomena is common...that within the context of...treat of personal or material loss that an individual develops not only major depressive symptoms, but also is rendered highly vulnerable to panic and dissociative episodes during the court proceedings of February 27, 1995 and subsequently through March 7, 1995.

August 15, 1997 Dr. Kappler released his complete Psychiatric Examination wherein he specifically diagnosed Michael Sherman as mentally incompetent at the time of his entering into settlement due to the stress that was placed upon him, by reason of acute and chronic anxiety and depression. both emotions of such intensity that he was unable to participate with any mental competency

within the realm of his responsibility required and assumed of him by the officers of the court.. "Mr. Sherman as functionally incompetent as well as completely ignorant and uninformed as to the consequences of the terms verbally presented to him while his cognitive and decisional processes were impaired".

October 2, 1997 Petition for Writ of Certiorari filed with the Supreme Court of the U.S.

From 1995 up to the present, Michael Sherman continues efforts to have the courts set aside the ruling by Judge Edward M. Ross. He struggled to find an attorney to represent his rights, each bequest greeted with disdain and wariness in defying a judge's decision and in confronting an injustice in the Los Angeles court system. One by one, over a period of months, he filed 27 appeals all denied cutting off all avenues of discovery for Mr. Sherman.

Mr. Sherman has learned from prominent attorneys, retired judge, and even a Dean at a local law school, that there are thousands of court cases similar to his in the California judicial system, and throughout the United States. A retired judge told Mr. Sherman "this is how we get our way", to control the system. With but two or three exceptions, there were more than about twenty-seven denials by the courts, which were postcards or one page computer printouts which reflected no authorizing/reviewing

jurist signature to support the basis that a judge actually made these decisions, nor any legal justification whatsoever for their denial. C.R.C. S28(f) states "the denial of review may be evidenced by an order signed by the Chief Justice and filed with the Clerk." The denials were merely stamped with the name "GEORGE". It is doubtful if these were even valid orders. It seems the issues presented were not taken seriously and were just given a cursory review without the weighing of the long reaching ramifications of the lower court's actions.

Dr, Kappler's findings clearly indicate that because Michael Sherman has been forced to defend his property rights, to expend time in his life when others are well established, if not securely retired, severe symptoms of a major depressive disorder and coexisting post traumatic stress disorder occurred and continue up to today. Dr. Kappler stated that Mr. Sherman's thinking style continues to be organized with no evidence of any psychotic symptoms" nor "aggressive, paranoid, or hostile behavior at any time". But he is just "defeated and depressed". He expresses an abject disbelief that he can be denied within the appeal process so many times without any substantial explanation.

The lower court judge consistently ignored, barred, and suppressed crucial evidence and documentation lodged in his case with the lower court and on many occasions allowed the denials of crucial material by

his own court clerk, as well as prohibiting their decision from being published. The Judicial Counsel letter has also been kept confidential. It remains a secret case and consequently, can not be researched. All that is open to the public is the denials. As a result, there will never be any record of this problem for the public to examine.

This growing problem has been exposed in articles of major news publications. The Wall Street Journal published an article on December 13, 1995 entitled "Appeals Courts Keep More and More Opinions Secret" Wherein Attorney John G. Kester examined this ever growing problem. "Judges should not be the one to decide which of their opinions get reported and used. The temptation is to bury shoddy reasoning or to tailor results to particular parties." On April 9, 1997 the Los Angeles Times article "Judging the Judges" comments on how so many judges are out of touch with reality. "There is a huge movement for judicial and legal reform going on in this country. And will lead not to the end of democracy, but to a judiciary that is fair and just." The Los Angeles Daily Journal printed an article on April 14, 1997 stating "although professionalism is growing a concern among lawyers nationwide, it is a particular problem in Los Angeles County, civil litigators say, because the court and bar are so large that it offers greater anonymity to uncivil lawyers...there are so many lawyers, so many judges, you can get

away with it. Steve Bertish's book "Crisis in our Courts" also exposes the problem of the court system today, that "judges are predisposed in many areas and they need to face it...In our appellate courts, something is terribly amiss." Judge Burton Katz, a former Superior Court Judge of Los Angeles County has written the book "Justice overruled" Which shows exactly what is going on in our courts. He writes, "It is not acceptable when judges wink ar dishonest. Yet it has become systemic...Which the very future of our society in the balance, there is a resounding cry for change in our judicial system...that must not go unheeded".

The most important reason for a review is to find out whether or not Mr. Sherman has suffered a deprivation of his constitutional due process rights and a multi-millon dollar loss of his private property. Mr. Sherman has a right of due process, to a fair and unbiased hearing which he did not receive. He was forced into a settlement, brought on appeal before the same judge he was attempting to disqualify for bias and favoritism toward the opposing attorney. He was precluded from offering any evidence supporting his case and upon appeal to a higher court was denied a rehearing over 27 times without any explanations of signatures by a Judge. Aside from losing millions of dollars, he has lost his rights his human rights as a citizen of the United States, to a fair and unbiased hearing.

The original issue still remains concerning Jerome Sherman's actions and all appeals demanding actual evidence of Jerome Sherman's living revocable trust have been ignored. And the only person who seems to have really gained from this whole legal proceeding Mrs. Plascencia, her husband Ruben Plascencia (now deceased), and their son, Jimmy Plascencia.

\S\
10/15/97

CASE OF MICHAEL M. SHERMAN

10/15/97

There is a tragedy in our court system today that, unfortunately, is unknown and moreover, hidden from the public eye. Judges are given control in their courtrooms and the issue arises as to where the line is drawn. The story begins with a victim, Michael Sherman, ironically a man who devoted his life to actively supporting principles of American democracy. As a foreign service officer for the United States for over thirty years until his retirement, he fought for human rights and democracy in foreign countries. He sincerely believed that no such battle would ever be necessary in our own court system.

Mr. Sherman, along with is brothers, was a beneficiary of the Sherman Family Trust established by his parents, Eva and Nathan Sherman, during their lifetime. The trust was valued in excess of $15.5 million dollars. After his mother passed away, Mr. Sherman's brother Jerome Sherman, with the aid of his salaried bookkeeper and companion, Mrs. Pat Plascencia, tried to gain control over the Sherman Family Trust which had been in existence for over sixty years. Induced and coerced by fraudulent transfers and misrepresentations, Eva Sherman, as she lay on her deathbed, executed involuntarily documents that made Jerome Sherman temporary

manager of the family estate. He quickly transferred the properties and assets into a secret living revocable trust in the name of Mrs. Pat Plascencia who subsequently denied the existence of any family trust and claimed the properties as her own, an estate of 56-57 properties in California and New York.

During this time, Mr. Sherman was working in Mexico. Upon his return, he was shocked to learn not only of his loss of inheritance, but the financial loss, the hundreds of thousands of dollars he contributed throughout the year toward these properties and assets as well as labor, contracting and improvements. Moreover, the emotional loss of being stabbed in the back by his own brother.

Thereafter, he made a grave mistake. He resorted to the judicial system in order to assert his rights to his share and his other other's share. The court proceedings began on February 27, 1995 before the Honorable Edward M. Ross in the Superior Court of Los Angeles. His own brother had already stolen from him all his inheritance and it looked like the situation couldn't get worse, but it could.

Every person involved in this case, the lawyers and the judge, grossly mishandled their responsibilities as officers of the court. A neutral accounting firm determined the values of the trust assets and settlement should have been based on this. However, the defendants' attorney Mr. Deroy, a personal friend of the judge, had already submitted a

settlement to Judge Ross without ever consulting Mr. Sherman.

In addition, Judge Ross had predisposed opinions of Mr. Sherman and of what he deserved. At a side bar, that was held off record, Mr. Sherman overheard Judge Ross tell his attorneys that there's no case and that Mr. Sherman should settle. Because of this preset deposition, he refused to accept any evidence that Me. Sherman attempted to submit. When Mr. Sherman's attorney mentioned he had more evidence in the trunk of his car, the judge responded "leave it in the trunk of your car". This was taken out of the court transcript.

Finally, Mr. Sherman's own lawyers, Mr. Klopfenstein and Mr. Polin, were not supporting his side. Not only were they negligent in submitting evidence and deposing witness, it seemed even intentional. They refused to allow his brother, Marvin Sherman, and his wife to testify. Then during the court's recess, together with defendants' attorney, they collectively coerced Mr. Sherman to settle. Throughout the lunch hour, his attorneys and defendants' attorney were continually intimidating him, reminding him of what Judge Ross stated and threatened that if he did not settle he would lose everything.

After months of being assured that his side of the story would come out in court and that he would have a jury trial, his attorneys had given up on him and were

looking for the fastest way to get out and get paid. Mr. Sherman was in shock that his own attorneys had ignored his pleas for justice and were pushing on him the best interest of the defendants. With no one else to rely on, he was faced with two options- accept the bone, or get nothing. Upon reentering the courtroom that afternoon, under the influence of his own two attorneys and defendants' attorney, Mr. Sherman succumbed to the pressure against him and unknowingly gave away all his rights of inheritance.

After the hearing, Mr. Polin threatened Mr. Sherman with serious reprisals if he did not show up to sign the settlement agreement at Mr. Deroy's office. When Mr. Sherman showed up to Mr. Deroy's office, he was still protesting and refusing to sign a huge stack of papers he had never read before. Mr. Deroy warned Mr. Sherman, "If you don't sign immediately, I will obtain a judgement against you today." As a layman, not knowing legally what his rights were in reality, he was left defenseless in their hands.

Without his knowledge, Mr. Sherman's case was subsequently dismissed, with prejudice by his <u>own</u> attorney., Mr. Klopfenstein.

Mr. Sherman tried to report his attorneys' conduct to the California State Bar. He even hired an attorney to help him, but his attorney backed out after receiving threats from Mr. Polin and Mr. Klopfenstein

to discontinue these legal actions against them. Again Mr. Sherman, fighting alone for justice, filed his complaints with the state bar. Mr. Sherman suspected his attorneys to be affiliated with Mr. Deroy and it became much more clear when they indicated they'd use Mr. Deroy in defending Mr. Sherman's malpractice suit against them.

Mr. Sherman then tried to set aside the judgment from the prior hearing. He requested that a different judge hear the case due to the fact that Judge Ross expressed a predisposed opinion as to Mr. Sherman, a bias that would impair his impartiality in hearing the case. The request was denied. Mr. Sherman now had to ask the judge he tried to disqualify to set aside his own ruling. What could be the chances of success in such a situation.

Mr. Sherman had six volumes of evidence supporting his case to set aside the judgment, proving his attorneys were negligent. But Judge Ross returned all these evidentiary documents before even allowing Mr. Sherman to present his argument, Judge Ross was again expressing his own personal opinion, "You really didn't seem to be entitled to much. I thought your brother was being rather generous...I think the settlement made....were much to your advantage".

Mr. Sherman tried to explain that he didn't understand the settlement agreement and that he was coerced into it. He tried to

go into the underlying facts, but Judge Ross went so far as to state, "No, no. Let's not get into the facts". Met with no help, he continued to file appeals to assert his rights and to be heard by someone in the judicial system. **Twenty-seven appeals** were filed up until today, all denied by a postcard or one page computer printout, without any judge's signature as required by law nor any explanation for the denial. He has struggled to find an attorney, each bequest greeted with wariness in defying a judge's decision and in confronting an injustice in the Los Angeles court system.

Consequently, Mr. Sherman sought professional help for the emotional distress he has endured since his mother's death. His doctor has concluded that he was without mental capacity at the time of settlement. And now he simply appears "defeated and depressed" by "an abject disbelief that he can be denied within the appeal process so many times without any substantial expiation.

Prominent attorneys and retired judges, even a dean of a local law school have informed Mr. Sherman that there are **thousands** of court cases similar to his in the California Judicial System, and throughout the United States. He was told by a retied judge that "this is how we get our way". And this is all kept hidden from the public. This decision, as well as others, by the lower court are prohibited from being published. This decision, as well as others, by the

lower court are prohibited from being published. The Judicial Counsel letter has also been kept confidential. It remains a secret case and consequently, can not be researched. All that the public will find is the denials. As a result, there will never be any record of this problem for the public to examine.

The most important reason for a review is to find out whether or not Mr. Sherman has suffered a deprivation of his constitutional due process rights and a multi-million dollar loss of his private property. Mr. Sherman has a right of due process, to a fair and unbiased hearing which he did not receive. He was forced into a settlement, brought on appeal before the same judge he was attempting to disqualify for bias and favoritism toward the imposing attorney. He was precluded from offering any evidence supporting his case and upon appeal to a higher court was denied a rehearing over 27 times without any expiation nor assurances that the denials were decided by judges as required by law. Aside from already losing millions of dollars, he has lost his rights, his basic rights as a citizen of the United States to a fair and unbiased hearing.

The original issue still remains concerning Jerome Sherman's actions and no one yet in the judicial system seems to care in solving this problem. The only person who has really gained form all this is Mrs. Plascencia who holds everything in her name,

all the properties and all the assets Nathan and Eva Sherman worked hard earning during their lives.

\S\
10/15/97

APP. 177

SECOND APPELLATE DISTRICT, DIVISION FOUR

S061613

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
JUNE 25, 1997
ROBERT WANDRUFF CLERK

MICHAEL M. SHERMAN, Appellant

v.

JEROME SHERMAN, et al., Respondent

Petition for review DENIED

GEORGE
Chief Justice

Michael M. Sherman
1002 17th Street
Santa Monica, CA 90403

March 23, 1997

Kenneth T. Caruth, Esquire
Deputy Commissioner III
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012
(213) 897-4852

Reference: Jerome Sherman, Real Estate Broker, (Mrs.) Pat Perdue Plascencia,

Case : Jerome Sherman/Mrs. Pat Perdue Plascencia PC #195-0410-010

Dear Commissioner Caruth:

Reference is made to my prior complaint to your office as known in the caption above.

This letter, together with the enclosed additional exhibits, are respectfully submitted to provide you with further means to investigate and confirm the allegations that both Jerome Sherman, a licensed Real Estate Brother and his salaried employee, (Mrs.) Pat Perdue Plascencia, have both egregiously contravened the standard code of ethics and professional conduct as reflected in the Commissioner's Regulations and

Business and Professions Code.

Jerome Sherman and Mrs. Plascencis would appear to be guilty of substantial real estate misconduct and rampant duplicity against me and the Trust. I, even, counted some 41 (forty-one) violations out of a possible total of 65 (sixty-five) Real Estate Board violations. (Reference Real Estate Regulations, Pt. 1, Code F10176 paragraphs (a) to (j), pages 109-110, Commissioner's investigations; conduct of business; grounds for suspension or revocation).

To this end, both Jerome Sherman and Mrs. Pat Plascencia, were engaged in the business or acting in the capacity of real estate licensee or employee within the State of California, and continue to do so up to the present time, with great harm to me and the Trust. They were complicity and perpetrated, among others, such alleged real estate violations as: major fraud, embezzlement with multi-million dollar losses to me and the Trust; broker misrepresentation and dishonest dealing; false promises,

fraudulent commissions; acting for more than one party in a transaction without the knowledge or consent of all parties; improper commissions and co-mingling of trust monies and properties; broker failure to provide full disclosure; illegal broker "double escrow"; brother's failure to disburse trust

funds to multiple beneficiaries; failure to maintain Trust Fund Account, inadequate Trust fund records, broker controlled escrow violations and inadequate record keeping transactions; perjury, forgery, conspiracy, obstruction of justice, and illicit enrichment of broker and salesperson.

This Family Real Estate Trust included over 57 (fifty-sever) real estate and personal properties in California and New York, in existence for over 60 years, up to the present date, with an estimated certified equity value in excess of $Fifteen and One Half Million Dollars ($15,500,000.00)

Listed hereunder are some pertinent exhibits to sustain my allegations against licensed Real Estate Broker, Jerome Sherman and Real Estate Office secretary-bookkeeper/sales-& rental person, Mrs. Pat Perdue Plascencia. They are presented in the detailed form listen in an attempt to clarify and unravel their real estate actions-- which almost defy explanation!

Sincerely yours,

/S/

Michael M. Sherman

Enclosures Submitted:

Exhibit 1.

Original Complaint of Michael M. Sherman to Department of Real Estate, Los Angeles, California.

Exhibit 2.

Volumes I-VI, To Superior Court for the State of California, (BC085156).3.

Exhibit 3

Request for Judicial Notice Pursuant to Evidence Code 452; Memorandum of Points and Authorities In Support Thereof.

Exhibit 4

Motion To Enter Additional Evidence on Appeal; Memorandum of Points and Authorities in Support Thereof (BC 085156 and BO98427).

Exhibit 5

Complaint of Attorney Popkoff, July 1993, Case No BC085156, Superior Court, listing in detail the 57 Trust and personal properties in California and New York.

Complaint was filed to: (1) To enforce oral trust in Real property; (2) Breach of

Fiduciary Duty; (3) To establish Resulting Trust; (4) To Establish Constructive Trust; (5) Partition of Real Estate; (6) Accounting; (7) Declaratory Relief. (Refer: Volume 1, BC085156, pages 49-74).

Exhibit 6

Sherman Family Trust properties in California and New York, estimated multi-million dollar values and estimated gross monthly and annual rentals, Jon Douglas Realty Company, 2444 Wilshire Boulevard, Santa Monica, California 90403. (Refer: Volume 1, pages 95-106, BC085156.

Exhibit 7

Copies of Title Searches of Trust Properties in California from Equity Title Company, Los Angeles. These include among others: 300 N. Bonnie Brae Street, L.A.; 2027 Court Street, L.A.; 8935 E. Ave "T" Street, Littlerock (near Palmdale), Ca; 6032 Romaine street, L.A. ; 1122 Sanborn Avenue L.A.; 2390 Chermoya Avenue, L.A.; 3913 Cumberland Avenue, L.A.; 2005 Gower Street L.A.; 3826 Griffith View Drive (Triplex), L.A.;8141 N. Kilkea Drive, L.A.; 6032 Hyperiorn Avenue, L.A.; 7402 Whitset Avenue, L.A.; 15520 Calle El Capitan, L.A.; 224 W. 78 Street, Los Angeles; 1720 W. 41 Street, L.A.; 4564 Lexington Avenue, L.A. 857 N. Edgemont Street, L.A.; 71276 Canyon Crest Road, L.A.;

13912 Drive, Glen Airy Redwood Drive, Pasadena, 128 N. Carson, Monteliore Cemetery lots in New York and Funeral Crypts at California. (Refer: pages 107-128, Volumes I, II, and III of Six Volumes, BC08156);Refer:: pages 138-160.16, Volume II of Six Volumes, BC08156), Refer: pages 242-278.25), Volume III of Six Volumes, BC08156.)

Exhibit 8

Numerous Records's General Index, from Hall of Records, Los Angeles. Shows certified evidence of Jerome Sherman's 1980, 1981, 1983, 1986, 1988, 1989, 1990, 1991. The latter 2 years of 1990 and 1991 were apparently to place real estate and personal properties by Jerome Sherman's into a "secret" Revocable Living Trust, as his "sole p" property, illegally and diabolically naming Mrs. Pat Plascencia as his Executrix and Beneficiary, together with her son Jimmy Plascencia, to all of our real estate Trust and personal properties. (Refer: Volume II, pages 172-185, of Six Volumes, BC085156)

Exhibit 9

Exhibit Summary Index (18 pages), dated December 1994, updated February 17, 1995, (Refer: pages 76-93, Volume I, of Six Volumes to Superior Court-BC085156. Appendix I-VI).

This document provides a good summary of many

of the alleged real estate Code violations perpetrated by Jerome Sherman and his salaried employee, Mrs. Pat Perdue Plascencia.

Exhibit 10

Revocable Living Trust of Michael M. Sherman, October 1985, prepared by Attorney Hal Epstein, Silver Spring, Maryland. (Refer: Volume III, pages 226-241, BC085156); also page 239, where my elder brother in New York, Marvin Sherman, was sent by Jerome Sherman, and unknowingly signed this quitclaim deed during February 1987. This was to sell, without my permission or authority, since our mother was legal owner of this Queens County New York "incinerator lot". (Refer: Power of Attorney arbitrarily signed by Jerome Sherman on February 9, 1987, and mailed to Marvin Sherman, and Superior Abstract Corporation documents, Section 26, Block 11456, Lot 24, Vacant land 77th street and 156th Avenue, Queens, New York.

This spurious document sent by Jerome revoked my own assignment of my elder brother, Marvin Sherman as my Trustee of my own Living Revocable Trust of 1985 (refer: page 239, Volume III; also further details, page 77-78, Exhibit Summary Index, 18 pages, paragraphs 1.b., 1.c, Affidavit of revoking Marvin as Trustee of Michael's own Revocable Trust agreement.

After consulting with Mrs. Plascencia, they set out to destroy the bonifides of my Living Revocable Trust by scheming, and unfortunately, succeeding, in canceling out my Living Revocable Trust prepared on/about 1985, during on/or about 1988, when Jerome and Plascencia asked me to sign some documentation "that would help and expedite transference of the Trust properties to me in case of the demise of Jerome. In reality, what they did was unconscionable. Jerome "slipped" in, without my knowing about it, a grand deed, together with about 30 other documents, which unknowingly and which I later found out years later, certainly was inimical to my best interests and the Trust because it revoked my own living revocable Trust of 1985. (Refer: details in Exhibits Summary Index, 18 pages, page 77, paragraph, 1.b1, mu Revocation of Living Revocable Trust, November 23, 1988, recorded December 29, 19889 by Jerome Sherman; also page 76, 1.b. Sworn Statement of Michael M. Sherman indicating I was falsely induced to revoke my own Living Revocable Trust by duplicity and fraud on the part of Jerome Sherman and Mrs. Pat Plascencia; also refer page 1.2.1., my Codicil To The Revocable Trust of Michael M. Sherman, that reflect Jerome induced me to sign real estate documents that they knew family Trust properties, and benefit personally and financially only Jerome and Mrs. Pat Plascencia and her family and

friends. (Refer: paragraph 1.2.1 page 176, Exhibit Summary Index, 18 pages).

Living Revocable Trust on behalf of Michael M. Sherman, prepared by attorney, Hal J. Epstein, White Oak Professional Park, 11205-B Lockwood Drive, Silver Spring, Maryland 20933 also refer, Exhibit Index Summary, (18 pages), Volume I, pages 76-91, specifically page 76, 1.2.1 Codicil I; 1.b.Revocation of Document; 1.b.2. Certificate of Acknowledgement Agreement of Michael M. Sherman; 1.c. Affidavit of Marvin Sherman on Quitclaim Deed, 1.d. Quitclaim Deed; also refer: February 24, 1961; 4.a. Revocation of Power of Attorney, for acknowledged on August 19, 1992, In Mexico City, D.F. Here, Sherman because of his dastardly fraud and deceptions to me and the Trust, I conveyed the Trust estate, in case of my death, to my elder brother, Marvin Sherman. (Refer: Volume III, pages 221-224).

Exhibit 11

This is a list of Trust properties in California and New York, prepared on December 15, 1995, by Jon Douglas Real Estate Company, 2444 Wilshire Boulevard, Santa Monica, California 90403.

One property in New York shows particular fraud and duplicity of Jerome Sherman. This is 2957-2960 West 33 Street, Brooklyn, New

York, consisted of main house (6 rental apartments, plus 9 summer seaside cottages Purchased with total seen money down payment from Michael M. Sherman while in the miliary service in Europe, to his mother, Eva Sherman, and in the Trust since on/about 1948. Sold on/about 1958 for $30,000. (Refer to page 79, 2.d. page 79, Exhibit Summary Index, 18 pages, indicating that on the sales documentation of 2957 West 33 Street, signed and witnessed on October 21, 1959 (document number 8777 pg 654, my elder brother's signature, Marvin Sherman, on deed of sale was forged by Jerome Sherman (volume IV, page 384.79).

Jerome Sherman improperly kept this entire $30,000 for himself in New York and refused by "bullying tactics" to share it with other legal owners, such as my mother, brother Marvin Sherman and myself.

Within one year, Jerome lost virtually the entire $30,000 sales proceeds on gambling (racetracks and sport bets in New York and California). Refer also to page 78, 1.6\h., Exhibit Summary Index, 18 pages, showing some of Jerome Sherman's Hollywood Park and Santa Anita racetracks, California. For example, within only a 2-3 day period, often accompanied by Mrs. Plascencia at the racetrack, his losses were over $5,000.00 (five-thousand dollars) Refer: Volume IV, pages 337 B.1 to 337 B.11; also page 78,

1.1., Exhibit Summary Index, 18 pages, explains Jerome's gambling addiction.

Refer also to page 78, 1.1, Exhibit Summary Index 18 pages,
Report on "The Compulsive Gambler: A Bet Guaranteed to Lose" by Dr. Sirgay Sanger, M.D. Dr. Sanger is President of the National Council on Compulsive Gambling and a New York psychiatrist. This magazine article is submitted herein for informational purposes. (Refer: page 78, paragraph 1.1., Exhibit Summary, 18 pages; also Request for Judicial Notice (blue cover), Tab 9.A., page 0049; and Volume IV, 340-358.

Exhibit 12

Police Burglary Report, November 1, 1993, naming Jerome Sherman and Mrs. Pat Perdue Plascencia as the suspects of the break-in by cutting off my lock and entering my storage bin at Sunset U-Store, 5138 Sunset Boulevard, L.A. Ca 90027. Brian Mahoney, Manager of this company, will be a witness and confirm the break -in at this time. The purpose of the break-in was to steal
personal papers of my 1983-1984 divorce, such as the "Dear Mother" letters which were furnished as "legal evidence" in the current court dispute, (Refer: Volume II, page 132, Tab 12; also burglary police report copy, Volume IV, page 337.F.1),

Jerome Sherman and Mrs. Pat Plascencia further connived and obtained from my former Attorney Jerry Green/without my knowledge or approval, divorce documentation including a :Memoranjum of Understanding, unsigned, who charged them $500.00, for these documents. Their Attorney, George DeRoy, then used these documents as "evidence" against me in the current legal case. (Refer: Exhibit Summary Index, Volume I, page 89, last paragraph to page 90, first paragraph).

Exhibit 13

Letter from Jerome Sherman to our elder brother Marvin (Marty) Sherman, November 3, 1986. Here, Jerome lists monies he allegedly made to me, and monies I made to him. This contradicts Jerome Sherman's assertions that "all the trust properties are mine . . I did all the work". This is a customary deceptive letter of Jerome. His monies allegedly received my me were utterly erroneous. The record shows that I provided personally from my own savings over $ 100,000.00 to my mother to purchase and work on remodeling and contracting chores on a majority of the Trust properties in New York and California. Practically all the Trust properties were purchased from my own savings-investment funds supplied to my mother who was considered responsible in these and the Trust property rental and sales. Both my mother and I did not consider Jerome reliable because of

his compulsive gambling habits/addition, with losses of many hundreds of thousands of dollars annually over the entire 60 years of our investment. (Also refer: Volume I, page 43 (last paragraph) to page 44 (first & second) paragraphs); also for Jerome's gambling habits and where Plascencia often joined him as high bettors, with Trust funds, at California racetracks and poker clubs in Los Angeles and frequently junkets to Las Vegas. (Refer: Volume IV, pages 340-358-with losses over $5,000.00 during two day gambling at Hollywood Park and Santa Anita racetracks).
Also refer Summary Index, 18 pages, explaining that Jerome Sherman had no real "permanent steady job", managing trust properties and very poorly at that since he considered practically incompetent and kept the trust properties in abominable condition. As Jerome had no real job during these years, he was unable to obtain bank mortgage loans. Therefore, I in the family was the sole person to apply for and obtain these bank loans, which have been done for the trust properties over 60 years.

In Jerome's letter to elder brother, Marvin Sherman, November 3, 1986 (Volume IV, pages 384.87-384.89), he states "I asked Mike if he were claiming any interest in my property which was quit-claimed by his X-wife> He said, 'No'. I relied on that . . . I do not, and will not ever recognize the "Trust" Mike

created without my consent . . . I'm sure you are aware the 'trust' was recorded in January 1986 with the Recorder's office . . . The answer for me is Joint Tenancy and my name must be added to my property . . . Mama did not work! ! I took care of mom. No one else took care of Mom. Now I have important decisions to make & I mist have any answer from Mike: exactly how much more do I owe him?. . . Keep this letter in your vault. It will refresh your recollection of the facts at a later time. . . .My Best Jerome". (Refer: Volume IV, pages 384.87-384.89).

Virtually all of the bank mortgage money for these properties were obtained by me since I was the only person with a steady job, and had perfect bank credit references as a U.S. Foreign Service Officer of the U.S. Department of State, Washington D.C. (Refer: Volume I, Exhibit Summary Index, 18 pages, specifically pages 78-79.

Exhibit 14

Letter of Attorney Mark Jan Salkin, Culver City, California, May 9, 1991, on my behalf, to Jerome Sherman, in an attempt to mediate this matter which Jerome , in his role as real estate broker demanded, or just took commissions as he sought fit, for purchase of trust properties. He refused consistently, with ferocious "bullying tactics" to make full disclosure on the Trust properties.

(Refer: Volume IV, page 384.91).

This letter of Attorney Salkin reflects that I did not want to have a meeting at our first cousin's home in Orange County on a weekend. Rather, I wanted to have a meeting "on neutral ground at Attorney Salkin's office or another suitable venue with a business like atmosphere.

As the letter further indicates, I wanted to have a final accounting from Jerome regarding my financial affairs, including a review of my tax returns and the documents of both his and the family trust in order to see that everything was appropriately regularized. Attorney Salkin asked Jerome to reconsider his initial refusal to a meeting and agree to meet in his office, together with Jerome's attorney, during an ordinary work day, at the beginning of June 1991. (Refer: Volume IV, page 384.91).

It now becomes clear that the reason Jerome did not wish to properly and ethically negotiate this matter because he was simultaneously scheming to unilaterally, without any authorization what so ever, place the trust properties <u>into his own secret</u> Living Revocable Trust, dated June 3, 1991, naming Mrs. Pat Plascencia as his "Executrix" of the Trust and apparent beneficiary and heir, together with her son, Jimmy Plascencia, of the Sherman family trust real

estate and personal properties. (Refer: Pages 397.1 to 397.3; also Volume I, page 83, paragraph 8 re Salkin letter).

Letter on my behalf from attorney Steven P. Haskett, San Diego, California, informing me that he had long (30) minute and cordial conversation with my brother, Jerry Sherman on May 25, 1990.

Mr. Haskett state that "In response to my inquires, Jerry (Sherman) stated. . . "as my brother, I don't want anyone to hurt Mike; however, I have been shocked and surprised that he would challenge me after all these years. . . . . Jerry further went on to ask whether or not you (Michael) were making a claim on his property and, if not, he requested that you set forth in writing exactly what you want of him. <u>There is no question in his ming, however, that the real properties are his to use and control, at least during the term of his lifetime</u> (underlining supplied). . .With respect of your W-2 and an itemization of any other income which you (Michael) received in 1989. He (Jerome) then stated that he would have the accountant prepare the tax return in the same manner as he has done for the past 35 years. . . In response to my question (Mr. Haskett) concerning whether or not you have received copies of past income tax returns, Jerry was somewhat evasive but did state that you could 'probably' obtain them from the

accountant who prepared the returns. The accountant with whom he has dealt is Ira Frankeo (sic-Frankel) at the accountancy firm of Zipperstein and Frankeo (sic), telephone number (213) 931-1643....Jerry then went on to state that he would consider your contacting the accountant directly rather than going through Jerry as you have for the past "35 years" a "challenge" to him and a "non-brotherly thing to do...Sincerely, (Law Firm) Phillips, Campbell, Haskett, Noone & Ingwalson, signed Steven P. Haskett".

Exhibit 16

Declaration under oath of Jerome Sherman, December 29, 1994, at Beverly Hills, California, for Receivership Hearings to remove Jerome Sherman as incompetent and negligent, to manage Sherman Family Trust real and personal properties. (Refer: Volume VI, pages 1792 to 792.94).

Declarations of attorney George DeRoy, on behalf of Jerome Sherman and Mrs. Pat Plascencia. Prepared for Receivership Hearings. (Refer: Volume VI, pages 795 to 800).

These documents would appear to be replete with alleged misrepresentations and possible alleged perjury and fraud. (Refer: Volume VI, pages 792 to 817).

Exhibit 17

Photocopies of canceled checks and monthly statements from the M. Sherman-J. Sherman-'Pink Checks' Trust Joint Checking Account of Security Pacific Bank, account # 112-190-199. (Refer: Volume V, pages 396.1 to 397.100).

Jerome Sherman in his Depositions, Case No. BC0859156, Volume I through Volume II; also refer Volume IV, pages 381.1 to 381. 382.177, specifically Volume IV, commencing with line 14, page 381.147 to 381.163, whereby Jerome Sherman obfuscated the record and allegedly perjured himself by denying there was any M. Sherman-J. Sherman "Pink Check" Trust checking bank account, refer: Volume IV, pages 382.147 to 382.153; also reiterated in Exhibit Summary Index, 18 pages, Volume I, page 90, paragraph 18.a. Bank of America copies of " M. Sherman -J. Sherman" Trust Joint Checking account of its predecessor bank, Security Pacific Bank, 1988-1991, 379 pages, Volume I, page 90, paragraph 18.a.

Exhibit 18.

Cemetery Lots, 8 in number of mother, Eva Sherman, Monteflore Cemetery, offices at 800 Fifth Avenue, New York, N.Y..Documentation included written declarations of elder brother, Marvin Sherman, February 20, 1995. The deeds of these lots, owned by mother, Eva Sherman, were personally given by her to

Marvin for safekeeping to hold for the benefit of all three (3) brothers. After the death of our mother, while Jerome was visiting in New York at Marvin's home, the former schemed to improperly grant deed these cemetery lots only in his name and remove the names of Marvin and myself off the deeds.

There are also cemetery burial crypts at Forest Lawn Cemetery complex in Los Angeles. I cannot find any paperwork on these cemetery crypts. (Refer: Volume III, pages 205-216; also refer; Exhibit Summary Index, 18 pages, Volume I, page 92, paragraph 23).

Exhibit 19

Affidavit of Marvin and Bess Sherman, elder brother and sister-in-law, residing in New York, affirm that Jerome Sherman diverted trust funds in New York and California. They further characterized Jerome as gambling uncontrollable in New York and Los Angeles and refused from giving trust money to his friends, Mrs. Pat Plascencia, her husband Ruben Plascencia, their son Jimmy Plascencia, and their relatives and friends. Because of this, our mother, Mrs. Eva Sherman resented this very much and so often told us of her pain, turmoil and embarrassment at family meetings and almost daily telephone conversations. She died so heart broken

because Jerome would not stop his gambling addition, and giving Plascencia and her family large quantities of trust funds and building supplies and equipment and purchasing automobiles for Mrs. Plascencia and her son, Jimmy Plascencia. (Refer: Volume III, pages 217-210; also refer for real estate trust, Exhibit Summary Index, Volume I, pages 79, paragraph 3, power of attorneys of Michael M. Sherman, dated February 24, 1961(3182 M8156 page 862, recorded September 22, 1961 and dated April 1, 1963 (recorded 4321 BK MI241PG800, April 10, 1963, appoint Jerome Sherman as power of attorney for Michael M. Sherman, with absolute power and understanding that mother, Mrs. Eva Sherman would firmly and carefully supervise Jerome Sherman's actions with Sherman Family Trust properties: paragraph 4. A. Revocation of Power of Attorney, December 17, 1976, Certificate of Acknowledgement of Execution of an Instrument Bk R522PC17, dated December 7, 1976, Jerold J. Whitman, Consul of the United States at Buenos Aries, Argentina. This revocation was made because mother and I felt that Jerome was not properly managing the trust properties as was necessary. He was using Trust rental funds and sales profits for gambling purposes, with "spectacular loses" according to members of the Los Angeles and Las Vegas gambling fraternities, and was also giving away large sums of trust fund monies, building supplies and equipment, vehicles, cloths and furniture to Mrs. Pat

Plascencia, her Husband Rubin Plascencia, their son Jimmy Plascencia, and their relatives and friends: paragraph 4.b. Revocation of Power of Attorney, December 1, 1976 of Eva Sherman as Attorney in Fact (4070 Bk R522/PG18, recorded December 14, 1976: 4.c. Reinstatement of Eva Sherman , a widow, as Attorney in Fact and Trustee, dated May 24, 1965, Richard D. Harding, Vice Consul of the United States of America, recorded on June 3, 1965, Ray E. Lee, recorder; paragraph 4.d. Power of Attorney to Lease and Handel Real Estate and Trustee, from Michael and Evelina Sherman, to Mrs. Eva Sherman "Mother", dated October 27, 1976, recorded under No. 4068 Bk M5542 Pg366 on December 14, 1976, Los Angeles County, Certificate of Acknowledgment of Execution of and Instrument (Bk M5542 Pg367); paragraph 5. Deed of Trust with Assignment of Rents, Trustee of Jerome Sherman's secret , not known by Sherman family members, Living Revocable Trust, 91-1730746 on October 31, 1991.

Exhibit 20

Letter from Jerome Sherman dated December 11, 1970 to Mr. and Mrs. Pat Plascencia "wife and husband", showing Jerome Sherman was acting on the Maplewood property as their licensed real estate broker, shown on his letterhead stationary as J.J. Sherman, Real Estate Broker , office address, 457 North Western Avenue, Los Angeles, California 90004,

Hollywood 3-46281. (Refer: Volume III, page 257.69).

Exhibit 21

Grant Deed, 83-405695, signed by Ruben Plascencia transferring (Maplewood property, Los Angeles), from Ruben Plascencia, husband of Pat Plascencia, granting to Pat Plascencia, a married woman as her separate (underlining supplied). There is an added note that "The real property herein described was purchased with the sole and separate funds of the grantee and is exempt pursuant to Ordinance # 9443. (Refer: Volume III, page 257.68).

It is known that Mrs. Pat Plascencia expressly removed this property off the name of her husband as separate property because Mr. Plascencia was terminally ill with bone cancer and under going treatment at Kaiser Permante medical center, Hollywood, California. To avoid sharing the benefits of Maplewood with Mr. Ruben Plascencia's other designated heirs, such as his sister, mother, and brothers, Mrs. Plascencia removed Mr. Plascencia's name as joint property to preclude any benefits from being accorded his relatives as they had promised and expected.

Note worthy is the fact that at this time, even though Ruben Plascencia was terminally ill and dying of incurable cancer, Mrs.

Plascencia succeeded in some way in obtaining a life insurance policy in Los Angeles for him. On his demise on/about 1985 in Los Angeles, it is believed Mrs. Plascencia received a sum of $85,000.00 (Eighty-Five Thousand dollars) from the life insurance company.

It is also known during this period, just before the death of Ruben Plascencia, Mrs. Pat Plascencia removed a great deal of Ruben's antique musical instruments and some other personal property that he had promised to give to his sister and mother, which were hidden and stored so they could not retrieve this property, at the apartment of Jerome Sherman, 6120 Glenoak Drive, which is one of our Trust Properties in dispute.

This is not an unusual practice for Mrs. Plascencia. When our mother, Mrs. Eva Sherman died during 1982, Mrs. Plascencia looted and plundered her cloths, furniture, and sold them in her garage sales which she held regularly at her Maplewood home in Los Angeles.

Mrs. Plasencia also took away, without my permission, during 1984 and 1985, all my personal cloths, and antique art work and furniture, that I had stored at my apartment at 6120 Glenoak apartment. Then Mrs. Plascencia also sold them at her regular garage sales at her home.

Exhibit 22

This is another questionable real estate transfer of Jerome Sherman, against the interests of the Sherman Family Trust. This deals with the 2-acre and small residence littlerock trust property, address; 8935 E. Avenue "T" Street (near Palmdale) California. By a Deed of Trust with Assignment of Rents, 93-2229164, recorded November 12, 1993, with Jerome J. Sherman, shown as "Trustee", under terms of the considered "secrete" Jerome Sherman Living Trust U/T/D6/3/91, granted to James Steven Plascencia, (aka Jimmy Plascencia), a single man, lots 134 and 135 of Track 9210, County of Los Angeles, State of California, as per map recorded in Book 148 Page (s) 51 of Maps, in the Office of The County Recorder of said County . . . . (Further addendum to this document: "If the Thrustors sell, alienate or convey the subject property, or any part thereof, or any interest therein, whether voluntary or involuntary, any indebtedness or obligation secured hereby, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice shall immediately become due and payable".

This grant deed, like the others, was post notarized three days ;later, on April 23, 1981 at the notarial office of Mr. I. Robert Benton in the San Fernando Valley. (Refer: Volume III, page 257.75).

I had obtained and personally arranged the sale of this lot for $34,000. (Thirty-Four Thousand dollars). With Century 21 Real Estate Broker Charles "Bodie" Bodenstein at 1404 North Moorepark Road, Thousand Oaks, California 91360.

Jerome promised me I would get my share of the proceeds of this trust sale -- as well as the remaining profit placed in the trust fund to purchase other trust properties. This did not occur. Jerome pocketed the entire $34,000. for himself and proceeded to lose it all on gambling junkets with Mrs. Plascencia and sharing the trust proceeds with Plascencia for her to buy some real estate houses and antique movie posters for herself and her son.

Exhibit 22.a

3. 1166 North Hyperion Avenue, 2-bedroom home (Refer: Volume II, pages 144-145.45), purchased 1976 with Trust funds with "Eva Sherman" (sic), , a widow and mother, and "Jerome Sherman", a single man, and son, as joint tenets. Jerome also improperly under the real estate regulations purchased this property as a licensed real estate broker. (Refer: Volume II. 145.6 and 145.11).

Similar to aforementioned properties, Thousand Oaks, West Moreland, Ventu properties, etc. Jerome and Pat Plascencia

fraudulently induced or forged Eva Sherman's signature on this grant deed, as the others, allegedly signed April 20, 1981, post notarized on April 23, 1981 by I. Robert Beton, notary public, recorded under number 810426742 April 29, 1981. Jerome Sherman utilized his real estate broker's office at 457 North Western Avenue, Los Angeles, CA 90004 as requested by Lawyers Titles Insurance Corporations when recorded.

Transfer Deed, 91-819409, signed and dated June 3, 1991, recorded under 91-819409, June 3, 1991, granting to (Jerome Sherman, a single man, hereby grant(s) to: Jerome Sherman, Trustee of the Jerome Sherman Living Trust under instrument dated June 3, 1991 which "secretly" named Mrs. Pat Plascencia as his "Executrix".

Exhibit 23

Two lots, (a) E.S. Fields Occidental Heights Tract. W. 50 ft of N. O. 75ft of S 1 (Volume II page 160.5; and (b) Earl (page 160.15); 50.75ft W 733 ft of S 2ft of N. 450 ft of Lot 5 (page 160.15); 50.75ft of Lot 4 Block 23, purchased by mother Eva Sherman, with her own funds with understanding it would be made a part of the Sherman Family Trust, on or about February 1961, Tax Deed APN 51804-24-48 (refer: Volume II pages 169.9-169-10; and alleged signature of Eva Sherman on Grant Deed January 5, 1982, under Grant Deed

January 5, 1982, acknowledging the owner of the lots as Eva Sherman, a widow, granting to Marvin M./ Sherman, a married man, son, and after recording mail to him at 105-78 Flatlands 8th Street Brooklyn, New York 11236, notarized by Notary Public Dorothy I Brockman, January 5, 1982 (page. 160.14, (refer: Volume II, page 160.15-160.16). (Volume II, page 160.5). This property was forfeited because Jerome forgot to pay taxes on it. It should be noted that the signatures of mother, Eva Sherman, on these documents, (pages 160.5 and 160.14), appear to be forgeries, and not the legal signature of mother, Eva Sherman.

Exhibit 24

The following Exhibits represent those Sherman family trust properties are still, or should still be in the Sherman Family Trust portfolio.

Exhibit 25

1122-1126 Sandborn Avenue, Los Angeles. Jerome Sherman purchased this property with family trust funds together with his friends, Gerry and Isabelle Kassenick, who provided an initial loan to Jerome and the Trust.

Jerome collected rents on this property, always considered as Trust property by my mother, Eva Sherman, and my self. Jerome

thought otherwise, since he co-mingled the trust funds/rentals diverting them into apparently a separate checking account only in Jerome's name. (Refer: Volume III, pages 261-262.9).

On August 8, 1991, Jerome Sherman transferred this trust property into his own "Secret" Living Revocable Trust #RLT 11911, recorded September 121, 1991, No. 91-1428193, purportedly naming Mrs. Plascencia as his "Executrix" and beneficiary of this property, and other properties of the Sherman family trust, in case of his death.

Exhibit 25.A

Montefoire Cemetery burial lots (8) in New York. Refer to page 1, Exhibit 16 for further details.

Exhibit 26

1166 North Hyperion Avenue. (For further details, refer to page 15, Exhibit 22.A

Exhibit 27

2027 Court Street, Los Angeles, California, single family home. (Refer: Equity Title Search documents, Volume II, pages 140-141.91).

This Sherman Family Trust property purchased

on/about June 1966, with title to the estate or interest covered by title insurance policy number 61741888 to Michael M. Sherman and Evelina Sherman, husband and wife, as joint tenants. (Refer:L Volume II page 141.62, with full reconveyance co. NR-124677, recorded December 10, 1971 in Book R38107, page 660, as Instrument No. 2240, Official Records of Los Angeles County, eliminating the Deed of Trust and Note secured thereby The Hongkong Bank of California, recorded 6/23/67 as Instrument No. 2978 in Book T5393, page 678. (Refer: Volume II, page 141.66).

By Jerome Sherman's Trust Transfer Deed, recorded under 91-91819403 on June 3, 1991 (same date as others) with Jerome Sherman as Grantor, a single man, hereby grants to Jerome Sherman, trustee of the Jerome Sherman Living Trust under instrument date June 3, 1991. (Refer: Volume II page 141.87).

Exhibit 28

6120-6126 Glen Oak Drive, Los Angeles 90068, six rental apartments in the Hollywood Hills, off Beachwood Drive. Purchased on/about 1971 with Family Trust funds and prior Trust rentals and sales monies, lot 192 of Tract 1504, as per map recorded in Book 21, pages 2 and 3 of Maps, Records of Los Angeles County vested and belonging to the estate herein of Michael M. Sherman and Evelina Sherman, husband and wife as joint tenants. (Refer:

Volume II, page 154.1-154.2).

By Trust Transfer Deed of Jerome Sherman, dated 8/11/93, under recordation 93-1559300, dated August 11, 1993, transference of this Sherman Family Trust property to Jerome Sherman as Grantor, a single man, as to undivided one half (1/2) interest, granting to Jerome Sherman Living Trust under instrument dated June 3, 1991. (Refer: Volume II, page 154.17).

Exhibit 29

3913 Cumberland Avenue, Silverlake area, Los Angeles, CA. A single home. (Refer: Volume III, pages 256.10-256.66; also pages 267.1-267.2 also page 256.63 to show that Jerome purchased this property with Family Trust monies as a real estate broker, as follows: "J.J. Sherman, Real Estate Broker, 457 No. Western Avenue, Los Angeles, Calif.90004".

Letter from law firm, Salyer & Salyer, dated February 16, 1982 reflecting that the escrow papers on the Cumberland purchases were awaiting (Michael M. Sherman's) signature and papers to come back from Holland. The letter to J.J. Sherman, as real estate broker on this purchase, also state the agent of the bidder. If you have a power of attorney, you could write that part in also and even send a copy of the power of attorney. However it seems the signature as the agent will be

acceptable., signed (Mrs.) Faye S. Eccles, Legal Assistant and Administrator". (Refer: Volume III, page 256.48).

Exhibit 30

300 N. Bonnie Brea Avenue, 11 rental unit apartment house. Purchased with family trust funds on/about 1973 with vested ownership in name of Michael M. and Evelina Sherman. Michael obtained mortgage for this Trust property from U.S. State Department Federal Credit Union, Washington, D.C. This letter from Jerome Sherman, April 4, 1973, on his real estate broker stationery states, in part, as follows: building, and fire hoses on each floor level. . . . The building is manage by me, and I try to keep rental units occupied with adults only. . . .Within the next year, Michael Sherman will install self-closing fire doors separating stair and shaft from tenants' apartments . . .This is a new fire regulation required by the Building Dep't. . . " (Refer: Volume III pages 241.34-241.35).

Exhibit 31

1016-1018 Laguna Avenue, Los Angeles, California, 6 rental units. Purchased with Sherman Family Trust sales and rental funds, on/about December 1972. (Refer: Volume III, page 264.65-264-66 for mortgage loan under Mr. and Mrs. Michael M. Sherman, American

Embassy, APO New York City, N.Y.

Exhibit 31.A

3913 Cumberland Avenue, Silverlake area, Los Angeles, California.

Jerome Sherman has falsely claimed repeatedly under oath in his depositions and declarations that he is "the owner of all the Sherman family real estate trust properties in California and New York"

This can be considered possible major perjury and fraud on Jeromes [art. This is another example of Jerome;s duplicity, in acting in his claimed position as "owner of a trust property" and as a licensed real estate of broker for purchaser, Michael M. Sherman; see Administer;s Deed 82-641950, recorded June 25, 1982, on the property 3913 Cumberland Avenue, Silverlake, Los Angeles.

Administrator's Deed indicates Jerome as the real estate purchaser's broker as follows: "When recorded mail to: Mr. & Mrs. Michael M. Sherman c/o J.J. Sherman Realty, 457 N. Western Avenue, Los Angeles, California 90004 (underlining supplied). (Refer: Volume I, page 113.5).

Exhibit 32

The following excepted deposition of Jerome

Sherman confirms that he allegedly committed perjury and fraud in his official deposition under oath to his attorney, George DeRoy, under discovery process at attorney Timothy Mackenzie's office in Westwood (on behalf), for the proposed Receivership hearings at Superior Court, Los Angeles to declare Jerome Sherman incompetent to manage the Sherman family trust properties. (Refer: Volume VI, page 795-800.

Some of the pertinent deposition excerpts are as follows: regarding the Cumberland property.

"Question (of attorney Mackenzie to Jerome Sherman)

Q. Were you acting as a real estate agent when you purchased this house? (3913 Cumberland Avenue, Los Angeles).

Mr. DeRoy: I object to that as being uncertain. I don't know what you mean by 'real estate agent.'

You may answer, if you can.

The Witness: (Jerome Sherman) I was licensed at the time of the sale.

Q. By Mr. Mackenzie: Were you acting in your capacity as a licensed real estate agent to purchase the property?

A. I believe I was.

Q. Did you obtain a commission?

A. I did.

Q. How much was the commission?

Mr. DeRoy: Slow down.

The Witness: (Jerome Sherman): I think it was a split a certain way based on probate regulations. There was a first bid and I was the over bid in court and I think it was two and a half, two and a half and five on the split, two and a half percent to the original bidder, tho and a half to the successful bidder and five percent on the over bid in probate court.

Q. By Mr. Makenzie: If you were acting in your capacity as a real estate agent and received a commission on the purchase of the property for whom were you acting as an agent?

Mr. DeRoy:- I object to that as calling for a legal conclusion.

You may answer.

The Witness: As a real estate agent I was acting for myself.

Q. By Mr. Mackenzie: You were not acting for your brother Michael?

A. As a real estate agent I was acting with another hat, a brother's hat, to help him get a property.

Q. So you actually purchased the property, put the down payment, and at the same time collected a commission for purchasing the property?

A. Correct.

Q. And do you recall how initial title was taken to the property when it was purchased by you?

Mr. DeRoy: Excuse me. You did ask that and he his answer.

Q. By Mr. Mackenzie: What was your answer?

A. Michael and Evelina Sherman.

Q. I'm sorry. I don't mean to ask the same questions over and over again. I just forgot what the response was.

Q. I'm sorry. I don't mean to ask the same questions over and over again. I just forgot what the response was.

A. That's all right.

Q. At any point did you acquire a legal interest in the property?

Mr. DeRoy: I object to that as uncertain, calling for a conclusion.

Q. By Mr. Mackenzie: Did you ever come on title to this property?

A. I did.

Q. When was that?

A. 1988

Q. And how did you obtain a recorded

title interest in this property?

A. Michael Sherman granted to himself and to me in joint tenancy. I believe that's what happened.

Q. Did you pay any consideration to Michael Sherman with respect to that transfer?

A. No.

Do you recall whether or not there were any balloon payments with respect to this property?

A. I can't recall that.

Q. Do you recall who would have paid the balloon.

Mr. DeRoy: Did you say who would have?

Mr. Mackenzie: Yes..

The Witness: No, I don't."

(For full deposition record, refer to Volume IV, pages 382.1 to 382.181).

(Refer: Volume IV, pages 382.157-382.160 for above excerpted deposition remarks of Jerome Sherman).

Exhibit 33

6032 Romaine Street, Los Angeles, California, single family home.
Joint Tenancy Grant Deed, granted to purchasers, Eva Sherman, a widow and her son, Jerome Sherman, a single man, This Trust property was purchased in the names of Eva

Sherman, a widow and her son, Jerome Sherman, A single man. (underlining supplied).

The documents, further indicates "When recorded mail to: J.J. Sherman, 547 N. Western Avenue, Los Angeles, Calif. 90004" (Jerome Sherman's real estate broker's office). (Refer: Volume,e I, page 110.1; also refer Volume IV, page 257.69 for further example of Jerome Sherman's real estate broker's letterhead stationery; further example of j.J. Sherman office stationery for Bonnie Brae mortgage application of Michael M. Sherman to State Department Federal Credit Union, Washington D.C. . (Refer: Volume III, page 241.34).

Exhibit 34

In Jerome Sherman's capacity over the years as a licensed real estate broker, together with Mrs. Pat Plascencia, held themselves up to no accountability to anyone, except their own self-serving greed, looting and plundering even those real estate trust properties on mother's name, Eva Sherman, an 81 year old at the time, terminally ill with cancer and legally senile and blind from diabetes.

On April 21, 1981, about 11 months before her death on May 21, 1981, both Jerome Sherman and Mrs. Pat Plascencia personally came to the hospice-nursing home in Hollywood of Mrs. Eva Sherman, an 81 year old woman, terminally

ill with cancer, medically senile and legally blind. This was a diabolical act on their part. They put before her in hospice-nursing facility without any witnesses present in mother's room, and had her sign her signature by inducement of forgery the already prepared grantdeeds on trust properties on her name, as well as local bank vault and savings account transfer documents from Eva Sherman to Jerome Sherman as "Sole owner of record".

Then 2-3 days later, Jerome Sherman and Mrs. Pat Plascencia had a notary public known to Mrs. Plascencia in San Fernando Valley post-date these grantdeeds. Jerome Sherman and Plascencia then had the grantdeeds recorded at the Hall of records, Los Angeles.

Exhibit 35

About 4-5 fraudulent grantdeeds as described above are shown below. (There may be other such properties but so far they had not been located).

"This instrument filed for record by Lawyers Title Insurance Corporation as an accommodation only. It has not been examined to its execution or as to its effect upon the title. The recording of this document was Requested by be mailed to Mr. Jerome Sherman, 457 N. Western Avenue, Los Angeles, CA 90004". (Note: this is the real estate office of Jerome Sherman, licensed real estate

broker. (Refer Volume I, page 128.8).

Exhibit 37

Thousand Oaks Lot, No. 48 and 49, Block 8, Ven-Tu Park Club (Refer: Volume III, pages 257.78-79).

Grant Deed, Sherman family trust property, purchased originally by Eva Sherman, a widow as her separate property, page 257.76, 257.77, 257.77.1, 257.78 and 257.79).

Further, Grant Deed, December 16, 1970, signed by mother, Eva Sherman (this is an example of her normal legal signature), 03-654, Lot & Tract, 481.49, Blk B., Ventu Park Terrace; future building address, 139 Hope Newbury Park ("Thousand Oak Lot"). Similar toreal estate violations described in N. Westmoreland trust property, Jerome Sherman and Mrs. Pat Plascencia visited by dying mother at the hospice in Hollywood, on April 20, 1981. Without any other witnesses present, Jerome Sherman and Plascencia tricked my mother into signing or forged her signature on this Grant Deed document.

It was so improbable that Eva Sherman could have understood in her condition what she was signing. In no way is the signature Eva Sherman's normal legal signature (Refer: Volume III, page 257.75. 0895).

Exhibit 38

6222 Glen Airy Drive, Los Angeles, California, single family home, in Hollywood Hills, off Beachwood Drive. (Refer: Volume II, pages 150. A-1 to 150.A-9).

This Sherman family trust property purchased on/about 1968. Vested in names of Michael and Evelina Sherman, husband and wife. (Refer: Recorded Full Reconveyance 1734, dated June 17, 1969, pages 150.A.4-150.A.7)

Jerome Sherman's Trust Transfer Deed, signed August 11, 1993, APN: 55182-024-015. Trust transfer deeds into Jerome's "secret" revocable living trust, R &T 11911, made and recorded by Jerome on the same date, August 11, 1993, naming Mrs. Pat Plascencia as "Executrix".

Exhibit 39

431 Redwood Drive, pasadena, California, single family home, purchased by Jerome Sherman, together with his friends Robert and Anne Arreola. Funds for this purchase by Jerome Sherman were from Sherman Family Trust and sales and rental funds. (Refer: Volume III, pages 250 to 251.20).
Jerome Sherman's Trust Transfer Deed, APN: 5709-012-006 signed June 3, 1991, recorded same day under 91-819406, naming of Mrs. Pat Plascencia as "Executrix" of the Sherman

Family real and personal Trust properties. (Refer: Volume III, page 251.20).

Exhibit 40

2490 Cheremoya Avenue, Los Angeles, California, single family hill house off Beachwood Drive, Hollywood, vested in my name, Michael M. Sherman, Grant Deed, signed by Michael and Esther Silberstein seller on April 9, 1964 (Refer: Volume I, Equity Title Company report, page 112.2 to 112.19.

At request of my mother, Eva Sherman, Michael Sherman paid about $5,000.00 downpayment out of his savings during on/about April 1964 as well as over $12,000. for remodeling repairs and refurbishing with new furniture for this Trust property. I spent my entire home leave/vacation time repairing this property. (Refer: Volume I, pages 112 to 112.19).

Trust Transfer Deed, of Jerome Sherman, signed June 3, 1991, recorded uneer 91-8119404, June 3, 1991, APN 5580-COS-017, under Jerome's living revocable trust R&T 11911, improperly designating Mrs. Pat Plascencia as the "Executrix" of this Sherman Family Trust property. (Refer: Volume I, page 112.19, Trust Transfer Deed of Jerome Sherman;s secret Living Revocable Trust, June 3, 1991, R &T 11911, fraudulently naming Mrs. Pat Plascencia as the "Executrix" of this Sherman Family Trust property, purchased for

the Trust, on or about 1964; some 34 years ago.

Exhibit 41

Ventura Lots (2), located "near the Water Tower" in Ventura, Lots 124, 125, and 126, Block 28, as shown on the "Map of Ven-Tu Park Extension Club and Cabin Sites," in the County of Ventura, State of California, recorded in Book 12, pages 10 et seq. of Miscellaneous Records of the County of Ventura, State of California. (Refer: Volume III, pages 270. to 270.6)

The lots were purchased for the Sherman Family Trust, recorded January 14, 1971. Improperly transferred by Jerome Sherman, a single man, granting to Jerome Sherman, trustee of the "secret" Jerome Sherman Living Trust under instrument dated June 3, 1991, recorded June 6, 1991.

Exhibit 42.

4953 Maplewood Avenue, Los Angeles, California. (For further details refer to page 12, Exhibit 21.

Following Trust Properties have been sold by Jerome Sherman. There are no records to show the disposition of any of the Trust funds by Jerome. This would involve in excess of a certifiable twelve Million dollars

($12,000,000.00).

Exhibit 43

1708 Bonita, LaVerne,California. Deposit Receipt, 9/6/68, signed (Volume III page 248.4) Marvin Sherman, and E. Sherman, sellers. Mortgage loan L-08051, February 7, 1968, Investors Savings and Loan Association $18,000.00 credited in name only to "Mr. and Mrs. Michael M. Sherman, 2006 N. Gower Street, Los Angeles, Calif. 90028". (Volume III, page 248.12).

Escrow No. 104627-S, Property, 1708 Bonita Ave., La Verne, Calif., dated March 12, 1968 addressed as follows: "Mr. Michael Mr. Sherman c/o J. J. Sherman, Broker, 457 North Western Avenue, Los Angeles, California 90004, (underlining supplied), (Volume III, page 2481.14).

Letter from Lawyers Title Insurance Corporation to Investors Savings and Loan Association. This shows again with a Courtesy copy "cc: J.C. Sherman Real Estate Broker" (underlining supplied), (Volume III, page 248.16).

Exhibit 44

841 Kilkea Drive, Los Angeles, California; single family home. Purchased with Trust funds, recorded September 28, 1970 Grant Deed

to Michael M. Sherman and Evelina Sherman, husband and wife as joint tenants. (Volume III, page 250).

Letter from Acme Escrow to Michael and Evelina Sherman c/o Department of State Reception Center, room 1302, Federal Building, 51 SW First Avenue, Miami, Florida, 33130. (Volume III, page 250.7).

Exhibit 45

Clayton Avenue duplex, Los Angeles. (Volume III, 254 to 256.9). Purchased with trust funds with one-half owner of record Jerome Sherman. (Volume III, page 256.3).

Exhibit 46.

720-7221/2 West 41 Street Drive, Los Angeles, California. 5 rental unit apartments, Purchased with Trust funds by Grant Deed signed by Michael M. Sherman and Elevina Sherman, husband and wife, and Jerome Sherman, a single man, all as joint tenants, dated January 27, 1977, recorded February 28, 1977 (Volume III, page 245.6)

Sold by Jerome Sherman, Falcon Escrow Inc. number 911, January 27, 1987 (Volume III, page 245.26) by improper "double escrow" scheme, (escrow papers induced by Jerome to be signed by Michael M. Sherman with promise that sales funds would be deposited into

trust funds and allocated equally; also signed by Jerome Sherman and then requesting as a real estate broker for the escrow company to make the sales check only in the name of Jerome Sherman--resulting in Jerome's total failure in depositing any sales funds into trust funds account as legally required, but rather improperly into his own personal checking account of approximately $105,000.00, representing the sales price of this property (Volume II, page 245.43.)

Exhibit 47
Calatrana Lot, Woodland Hills, California, Lot 1765, purchased with Trust funds, December 1965, Administrator's Deed, 1299, BKD3216 pg 988, recorded February 24, 1966 (Volume III, page 260.2; also plot map shown as Tract No. 6170 Book 76 pages 57 to 62 of Maps (Volume III, page 260.14).

It is known that during the turmoil and devastation of my divorce during 1984, Mrs. Pat Plascencia intentionally recommended against my best interests and those of the trust, for my ex-wife to insist that she obtain from me this lot, as well as my single family house trust property at 128 North Carson Drive in Beverly Hills, as well as my property in Buenos Aires, Argentina. This diabolical coaching and advice given to my ex-wife even though Mrs. Pat Plascencia knew that my ex-wife was a drug abuser, a promiscuous person with scandalous adulterous

relations with her "paramours" in Buenos Aires, Argentina, the United States and Europe. (Refer: for further details to Volume I, Exhibit Summary Index, 18 pages, specifically page 86, first paragraph.)

For further details on this matter, also refer to Volume V, pages 451 to 474, manuscript of Michael M. Sherman on his divorce "the story of former American Consul at the U.S. Embassy in Buenos Aires, Argentina, reveals this scandalous "portena" (from Buenos Aires), also know known as Evelina Rosas., without any discussions or warnings, destroyed her family, her marriage, her home to rush back to her paramour in Argentina. "One Man Hurt", (Un Hombre Herido in Spanish, pages 475 to 497--- The Story of the Final Break-up of a Marriage, also a lascivious and scandalous letter from Mrs. Tessa in Amsterdam, Netherlands, to ex-wife, Evelina Fleischer Sherman, dated November 10, 1982, prior to my divorce and while we were married with two young sons. (Volume V, pages 497-507 English translation -- pages 506 to 507 Spanish copy. Mrs. Tessa's "hot panties" letter .."Tu carta me ha puesto le suego en las bombachas" (your letter put a fire in my panties), (page 501, paragraph 2; also page 507, paragraph 5, Spanish copy).

Psychiatric Profile of ex-wife, Evelina Fleischer Sherman, diagnosed as virtual

sociopath". (old term used was psychopath", (pages 508.1 to 515)

United Press Wireless Reports (2) on "Ex-Consul Denounces Former Wife in Drug Scandals", February 22, 1992, (pages 516-518).

Letter of ex-wife, Evelina Fleischer Sherman, dated January 3, 1983, writing to a friend in Holland about her lascivious relationship with her Argentine paramour, Carlos Diego Rosas. (Volume V, pages 520-523).

Declaration of Michael Sherman, dated September 281, 1991 affirming his former wife, Evelina Fleischer Sherman infected him with a serious sexually transmitted disease (STD) causing him sterility; subsequently she contrived, unsuccessfully, to falsely and diabolically claim me as the biological father (so I would pay all the medical expenses and support of the child until maturity (pages 5234 to 531).

MMSherman letter to the Editor of Newsweek Magazine, April 3, 1993. Journalist Tim Padgett of Newsweek won the annual U.S. Journalism Award for this important article, entitled "Cocaine Comes Home, Latin America Thought Drug Abuse was "A Gringo Problem' No More". (pages 531 to 539).

Letter from mother in law of ex-wife, Evelina

Fleischer Sherman, dated December 12, 1982, stating that . . ."You know that we love you very much and that you became part of the family". (page 541.1 to 541.2)

Investors List, October 15, 1991.
Exhibit 48
Letter from Michael Van Dusen, September 15, 1993, Chief of Staff, Committee on Foreign Affairs, I.S. House of Representatives, Washington D.C. (page 546).

Letter of October 13, 1993, from Congressman Henry A. Waxman, 29th District, California, October 13, 1993. Both letters reflect I personally visited them at their offices in Washington D.C., and provided them with written documentation on important U.S. National Security priorities in South America in promotion in the Rule of Law, Human/Civil Rights and Democracy. (Volume I, page 28). 224, 224 1/2, 226, 226 1/2, West 78th Street, 5 rental apartments. Purchased with Sherman family trust funds. Jerome Sherman, acting on behalf on the trust, or so it was thought, received on about November 3, 1986 sales funds of approximately $180,000, by Grant Deed, Jerome Sherman a single man, granting to Ernest T. Hernandez and Rosa A. Hernandez, husband and wife as joint tenants, recorded under 86-1853718, December 31, 1986. (Refer: Volume I, page 122.2.)

It is unknown, to date, what Jerome Sherman

as a licensed real estate broker did with the sales funds. He never deposited, as required, into the Sherman Family Trust fund account.

Exhibit 49

34 East Newman, Arcadia, California, single family home (Volume I, pages 274-275.13)

Purchased March 1966 with Sherman Family Trust Funds, Full Reconveyance No. 75547, recorded April 9, 1968 under name of Michael Sherman and Evelina Sherman, husband and wife. (Volume I, pages 3-23-66, loan no. 6649897 was made out for bank mortgage loan of $10,500.00 for this property,m in name only of Michael and Evelina Sherman, 2006 N. Gower Street, Hollywood, California, (Volume I, page 275)., (Volume I, page 275.1).

This property was sold by Jerome Sherman, date unknown, as a real estate licensee. Jerome Sherman never properly deposited the sales funds into to the Family Trust Fund account, but diverted it, as usual, without any consideration to his family members, despite them making numerous complaints about this. No records were kept whatsoever by Jerome Sherman on the distribution of the sales Trust funds realized on this property, or any other trust property.

Exhibit 50

720, 720 1/2, 722, 722 1/2, West 41st Drive, Los Angeles, 5 rental units. Sales Escrow instructions, Lawyers Title Insurance Corporation, Los Angeles, Main Office, 3030 West 6th Street Los Angeles 90020, purchased August 1976, under name of Michael M. Sherman and Evelina Sherman, husband and wife, and Jerome Sherman, a single man, all as joint tenants. (Volume 1, 245.11).

By Quaker City Federal Savings and Loan Association February 23, 1977, loan no. 10275024 B (Volume I, page 245.12), mortgage loan made out to Michael M. Sherman, et al, 2006 N. Gower Street, Los Angeles, Ca 90068. Total loan on Michael's name was $14,500.00 (Volume I, page 245.12).

By Short Form Deed of Trust and Assignment of Rents (Individual), made 18th day of December 1986, for Alfonso H. and Alfonso A.Garcia, Ticor Title Insurance Company of California, a California corporation to Michael M. Sherman, a married man and Jerome Sherman, a single man as Joint tenants, recorded December 30, 1986, 86-18222235 (Volume I, page 245.38).

Sold by Jerome Sherman as real estate licensee for about $105,000.00 By "double escrow" Jerome Sherman received the check for this sales amount name of Michael M. Sherman, and then had the escrow company reissue the check only his name, and then diverted the

funds to his own personal checking account rather than to the Sherman Family Trust Account (Refer: Volume I, page 245.39)

Exhibit 51

13912 Vermont Avenue, Los Angeles, California, (Gardenia Duplex Rental Units). (Volume I, page 127).

By QuitClaim Deed, Eva Sherman and Michael M. Sherman, mother and son in joint tenancy hereby releases to Eva Sherman and Michael M. Sherman and Marvin Sherman, mother and sons in joint tenancy., dated November 1, 1980, recorded November 4, 1980, number 80-1105928.

This was the only trust properties that Jerome Sherman was not able to divert the sales funds to his own personal checking account upon sale. Mother, Eva Sherman, insisted tat three brothers receive equal share of sales, which Jerome at first refused to abide with. He nevertheless, receive a real estate commission as a real estate broker. (Volume I, page 127.10).

Exhibit 52

6639 Green Valley, California, Lot 23 building lot. Purchased by mother, Eva Sherman, with Trust funds; gifted this lot with full approval of family trust members to Marvin and Bess Sherman, Elder brother and

sister in law respectively, (Volume III, page 266.2).

Exhibit 53

Property at Leighton Avenue (number not known at this time).

Jerome Sherman used Family Trust Funds to purchase this property on behalf of the trust, in conjunction with his friends, Gerald and Isabella Kassinick. In its subsequent sale, the division of the sales funds were shared 1/2 for the Kassenick couple, and 1/2 to Jerome Sherman, who merely deposited the proceeds into his own personal checking account rather than the Sherman Family Trust account.

It is known that Jerome received a real estate commission of $4,590.00 on this sale as the real estate broker.

Exhibit 54

Pampa 3148, Buenos Aires, Agentina, South America. Single Family Town House. Purchased with Sherman Family Trust funds. Transferred with at full approval of Sherman Family Trust member, to ex-wife, Evelina Fleischer Sherman under the terms of the 1984 divorce.

Exhibit 55

Various New York Trust properties purchased by Trust Funds by Eva and Nathan Sherman, mother and father respectively, but never accounted for in required Trust funding accounts for these properties by Jerome Sherman.

(a) Commonly known as 2842 West 35 Street, Brooklyn, New York.

(b) Commonly known as 2832 West 35 Street, Brooklyn, New York.

(c) Commonly known as 2957 West 33 street, Brooklyn, New York.

(d)two (2) single family residences located in New York, referred to by the Sherman Family as "Willy Property" (Willoghby Street), and "Sally" (on Sandford Street).

There were additional New York properties on Mermaid Avenue; 2957 W. 33 Street; 2952 (?) W. 29 Street, 2842 W. 35 Street; 2932 W. 35 Street.

(e) Jewelry, coins, precious metals and other personal property previously belonging to parents, Eva and Nathan Sherman and Michael M. Sherman, unilaterally taken out of bank vaults in Los Angeles by Jerome Sherman upon the death of mother, Eva Sherman. Refer: Request for Judicial Notice filed February 20, 1997 blue cover, pages 0091-0117.

Unfortunately, the above described real and personal properties are not a complete list of Trust property, as Jerome Sherman and his "salaried employee", Mrs. Pat Plascencia, have consistently refused to provide full trust property listings, as well as other documentation such as their tax statements and Jerome Sherman's "secret" living revocable trust prepared during 1990 and 1991 in Los Angeles.

\S\

Michael M. Sherman

I, Michael M. Sherman, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and it is executed this 23rd day of March 1997 at Los Angeles, California.

\S\

Michael M. Sherman

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE 03/01/97

MARTIN WOLF
433 N. CAMDEN ST.
STE. 1200
BEVERLY HILLS, CA 90210

RE: Sherman, Michael m.
vs.
Sherman, Jerome
2 Civil B098427
Los Angeles No. BC085156

THE COURT:
Petition for rehearing denied.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE 02/27/97

MARTIN WOLF
433 N. CAMDEN ST.
STE. 1200
BEVERLY HILLS, CA 90210

RE: Sherman, Michael M.
vs.
Sherman, Jerome
2 Civil B098427
Los Angeles No. BC085156

THE COURT:
APPLT'S. REQUEST FOR JUDICIAL NOTICE IS DENIED.

IN THE
COURT OF APPEAL STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 4 DATE: 10/11/96

RE: Sherman, Michael M.
vs.
Sherman, Jerome
2 Civil B098427
Los Angeles No. BC085156

THE COURT:

Motions to disqualify Presiding Justice Charles B. Vogel, Justice Norman Epstein and Associate Justice Gary Hastings are DENIED.

APP. 235

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE 08/28/96

MICHAEL M. SHERMAN
1002 17TH STREET
SANTA MONICA, CA 90403

RE: Sherman, Michael M.
vs.
Sherman, Jerome
2 Civil B098427
Los Angeles No. BC085156

THE COURT:
APPLT'S. RECONSIDERATION REQ OF 8-8-96
MOT IS DENIED

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE 08/28/96

MICHAEL M. SHERMAN
1002 17TH STREET
SANTA MONICA, CA 90403

RE: Sherman, Michael M.
vs.
Sherman, Jerome
2 Civil B098427
Los Angeles No. BC085156

THE COURT:

APPLT'S. MOTION TO ENTER ADDITIONAL EVIDENCE IS DENIED.

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

Michael M. Sherman,	B098427
Plaintiff and Appellant	Sup Ct.no.BC085156
vs.	Edward M. Ross,
Jerone Sherman	Judge
Defenants and Respodents	ORDER
	FILED
	FEB 5 - 1996
	JOSEPH A. LANE
	CLERK
	R. TAYLOR DEP. CLK

THE COURT:

The petition for writ of supersedeas, and and amended request for stay, has been read and considered and is denied.

---

*VOGEL (C.S.),P.J.,EPSTEIN,J.,HASTINGS

CHAIR: PUBLIC SAFETY COMMITTEE
VICE-CHAIR: PUBLIC WORKS * MEMBER: GOVERNMENTAL EFFICIENCY

In response to your request, we are providing this for your use in making a complaint about a California Judge

COMPLAINT ABOUT A CALIFORNIA JUDGE
Confidential under California Constitution Article VI, Section 18

To: Victoria Henley

Today's Date: November 28, 1995
Director:
Your Name: Michael M. Sherman
Commission on Judicial
Your Telephone Number 310-4532610
Performance
Your Address: 1002 17th Street,
Howard Street, Ste 300
Santa Monica, CA 90403
San Francisco,
California 94105
Tel: (415) 904-3650

Your attorneys name: Currently in Pro-Per.
Your Attorney's telephone number --
Judges name: The Honorable Judge Edward M. Ross
Court: Superior Court, Department 39.
County: Los Angeles, California
Name of case and case number: (Refer Below)

Please specify exactly what action or behavior of the judge is the basis of your complaint. Please provide relevant dates and the names of others present. Use additional sheets if necessary.

Case References:

BO-96345, Supreme Court of California; CA Appeal Court, 2nd Appell.Dist.
BC085156, Superior Court, Dept. 39, Hon. Judge Edward M. Ross, Presiding, California State Bar, Los Angeles, Case #:95-0-13637.
95C01004, Municipal Court of Beverly Hills, County of Los Angeles.
95-T01470, Municipal Court of West Los Angeles, Purdue Street.
SC-036375, Superior Court of Santa Monica, California.

There follows my statement in support of a complaint on the Honorable Edward M. Ross, Superior Court, Department 39, County of Los Angeles.

Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, California 94103

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

Michael M. Sherman,	B098427
Plaintiff and Appellant	Sup Ct.no.BC085156
vs.	Edward M. Ross,
Jerone Sherman	Judge
Defenants and Respodents	ORDER
	FILED
	OCT 31 1995
	JOSEPH A. LANE
	CLERK
	R. TAYLOR DEP. CLK

THE COURT:

The petition for writ of mandate has been read and considered together with the supplemental petition filed October 26, 1995, and is denied for absence of facts demonstrating entitlement to extraordinary relief.

---

*EPSTEIN Acting P.J.,VOGEL (C.S.),HASTINGS

Michael M. Sherman
August 17,1995
1002 17th Street
Santa Monica, California 90403
Telephone No. (310) 453-2610

This report is a continuation to my previous California State Bar letter, reference State Bar Inquiry No. 95-2448. That I the complainant herein and know the following facts to be true of my own personal knowledge, except as those facts plead under information and belief and I believe them to be true. If called upon to testify I could competently testify to such.

In or about May, 1995 I retained the services of Troy A. Stewart, Esq., State Bar No. 135764 C/O 1093 Broxton Avenue., Box 710, Los Angeles, California 90024 to represent me in the following matters:

Sherman v. Klopfenstein, Superior Court of California, Case No SC036375; Klopfenstein v. Sherman, Municipal Court of California, Case No 95C01004; Polin v. Sherman, Municipal Court of California, Case No 95T01470.

Subsequently, for reasons unbeknownst to me, communications and well as the working relationship between Mr. Stewart and myself broke down to the point where I felt, and now feel, that Mr. Stewart was and is no longer acting in my best interest. In this context

it is my belief that Mr. Stewart has either been solicited by, accepted money from, or in another way is working somehow in conjunction with the Defendants in the Superior Court case, who are also the Plaintiffs in the two Municipal Court cases.

As to the other attorneys herein complained of I have previously submitted a complaint as to their actions.

However, I hereinagain reiterate upon the same to demonstrate to this Bar Association the events which have lead to this complaint.

I was previously a Plaintiff in a lawsuit: Sherman v. Sherman, Mrs. Pat Plascencia et. al., Los Angeles Superior Court, Case No. BC085156. In this action, which I filed against the defendant, Jerome Sherman, and his bookkeeper, Patricia Plascencia, I sought to recover approximately 56 - 57 pieces of real property, as well a personal property and rental monies, whose total value was in excess of ten million dollars ($10,000,000.00).

These properties were originally held in a constructive family trust by the Sherman family, and had been acquired by my family commencing in or about 1938 and continuing on to approximately the date of the lawsuit.

These properties were, without the family's knowledge or authorization, placed by the defendant, Jerome Sherman, a licensed California Real Estate broker, into his own name. To this end both the defendant, and co-

defendant, Plascencia, subsequently denied the existence of the family trust and claimed the properties as their own.

I further sought to recover the trust property income from Jerome and Plascencia which had never been distributed to the other family members.

On or about October 7, 1994 I retained the service of attorney John Klopfenstein (State Bar No. 164905) to represent me in this matter. As part of our agreement he agreed to keep me informed as to the case, and to respond promptly to my inquiries, as I was a resident of Mexico City, Mexico at the time. He also agreed not to settle the case without my approval and that I reserved the absolute right to accept or reject any offer of settlement.

On or about January 13, 1995 I retained the services of Michael R. Polin (State Bar No. 130463) to replace Klopfenstein,as my attorney of record; however Polin, was due to his schedule only retained later as he informed me to review certain documents, advise and supervise Klopfenstein on my cases, and prepare written opinions and procedural assistance and settlement strategies on my case.

Soon after my initial retaining of Klopfenstein and Polin they began to exhibit many signs of inattentiveness, inexperience in such cases as mine, negligence and a lack of diligence on my case. I have reason to believe that they seem to be working, or

better stated lack thereof not for me and my case, but for the sole benefit of the defense counsel and defendants. Despite many repeated messages to them both by telephone, courier, facsimile, as well as by letter they often failed to communicate with me regarding the status of my case, thereby causing disastrous legal results in my case in the mediation hearing of J.A.M.S., (Judicial Administrative Mediation Service), the Receivership hearing at Dept. 86 of the Los Angeles Superior Court, as well as Dept 39 Superior Court Hearing of February 27, 1995. Both counsel's together with Mr. DeRoy, defense counsel imposed arbitrarily for me a settlement which was completely unplanned, unauthorized, and without regard whatsoever to the benefit of my case. There appeared to be further indications to me that the actions of Klopfenstein, Polin, as well as Stewart, may have involved among others, misrepresentation and obstruction of justice to prevent the truth and veracity of my case from ever reaching the courts and its officers.

To this end during this time I attempted to communicate with Klopfenstien regarding information and evidence that I had found regarding the defendants' possible involvement in numerous criminal and civil violations of the California law, and California Real Estate Laws and Regulations, and the Commissioner's Business and Commercial Codes. However, in this effort Klopfenstein, and Polin rarely responded with

any professionalism and ethics to my questions or inquiries, or effectively or competently followed up on the extensive information and evidence I provided to them.

The following is an abbreviated list summarizing many of the examples of Klopfenstein's, and Polin's lack of diligence, lack of professionalism, and negligence as to my case, which left me for all practical purposes without any proper legal representation for which I contracted for:

1. Failure of Klopfenstein, and Polin to follow up on defects in the defendants' case, such as forged and falsely induced and misrepresented property transfer documents in dealing with my mother, Mrs. Eva Sherman, Marvin, and Bess Sherman, and myself.
2. Failure to obtain or attempt to obtain through discovery pertinent tax records, expenses, rentals, sales and purchase documents which could have detailed taxes, sales and purchases payments made by respective family members on the disputed trust real and personal properties.
3. The basic failure to present or argue the case based upon the entire family trust corpus, in that since approximately 1961, the

56 - 57 properties in question had been bought with monies obtained by either myself, personally or through loans, or by monies from our mother, Mrs. Eva Sherman, or from monies obtained from the income obtained from the family's other rental properties. At no time did Klopfenstein, and Polin argue or make any attempt to put into evidence showing this. Instead Klopfenstein and Polin based his entire case upon only six properties, despite my repeated request and warning to include the entire 56-57 pieces of real property, and various personal property, with an equity value in excess Ten Million Dollars ($10,000,000.00) which caused the eventual settlement negotiations to include for me only three properties of no value because of earthquake damage, and violations of building and safety codes.

4. Klopfenstein and Polin failed yet again to inquire about or investigate the whereabouts or disposition of any of the funds from the defendant Jerome Sherman and co-defendant Plascencia's sale of the properties, and massive personal property and clothes of

both my mother Eva Sherman, and myself. To this end our family was always warned by our mother, Mrs. Eva Sherman and myself to watch any transactions done by the defendant Jerome Sherman and assisted by co-defendant, Mrs. Plascencia, as Jerome was known to be a compulsive gambler and ruled by Mrs. Plascencia, with known spectacular gambling losses by Jerome in New York and California.

5. Klopfenstein and Polin failed to investigate the total involvement of the co-defendant Plascencia in the action to ascertain her full involvement in the transactions and Jerome Sherman's actions and Plascencia's handling of the Trust records, bank operations, tax reports, as his salaried bookkeeper.

6. Klopfenstein, and Polin failed to perform adequate research on his theories of recovery in the case despite being informed by the Courts that there was no oral trust but instead a constructive trust. Despite this knowledge they still continued forward under the erroneous theory of an oral trust which greatly prejudiced my case; nor did they respond to the issue presented

regarding estoppel under the theory of the Statue of Frauds.

7. Despite my requests, Klopfenstein failed to follow up on the substance of a letter given to Judge Tenner in the J.A.M.S. Mediation session by defendant's counsel.

8. To my detriment and against my repeated written and oral requests, Klopfenstein and Polin filed to waive a jury trial in my case thereby depriving me yet again the opportunity of getting the truth before the court and the court's records.

9. Both Klopfenstein and Polin both severely intimidated and coerced me and thereby creating unspeakable fear and turmoil into settling the case by repeatedly advising me that I had no case at all, and would lose all the properties and receive nothing if I did not settle immediately. They even evoked the courts admonition that I did not have a meritorious case at all that my case was only worth thirty minutes of consideration notwithstanding that my case was certainly meritorious and had an equity value in excess of ten million dollars ($10,000,000.00, as well as the

court records which were replete with signed written contracts, notes, documents, and memoranda in writing and signed by the parties involved or their authorized agents and their attorney's in fact. It seemed apparent to me that neither attorney had properly researched or prepared my case as the documents and testimony had been given to them by me and they had it in their files for almost one year.

As a result an inequitable settlement agreement was entered in the case and the case dismissed with prejudice without my knowledge or consent.

Because of this I retained the services of Troy A, Stewart to represent me in malpractice cases against both Klopfenstein and Polin. *Attached hereto are the pertinent exhibits ____ on Mr. Stewart's actions.*

My concerns in this matter began within weeks after my retaining of Mr. Stewart. After he filed my Superior Court malpractice case against Klopfenstein and Polin for their negligent, incompetent and unprofessional handling of the Sherman trust case for me, Mr. Stewart received at least one letter and one phone call from Klopfenstein, and Polin, that were of a threatening, unseemly and unprofessional. *Please see Exhibit _____*

Subsequently on or about May 26, 1995 I

received a letter from Mr. Stewart advising me that I had misrepresented various aspects of that case regarding tax implications, property management filing, and other matters related to this and as a result he would be withdrawing immediately as my attorney, but subsequently after apparent reflection of one week he rectified this threat to say that he would remain my attorney of record for 60 days from the date of that letter. *A true and correct copy of a letter received from Mr. Stewart is attached hereto as Exhibit ___.*

During this same time frame the Defendants in the Superior Court case, Klopfenstein and Polin, both filed demurrers to the complaint. I attempted during that time frame to contact Mr. Stewart several times regarding the opposition to the demurrers, however, received no definitive response from Mr. Stewart at all, and as a result, I contacted another attorney and requested that he file a request for dismissal on this case, without prejudice, to protect my rights. It is my intent to refile this case at another time with another counsel, and my intentions were to preserve any issues which may have been lost in the event that the demurrers were sustained due to Mr. Stewart's lack of timely response, and unethical and unprofessional conduct.

Subsequently, and during that time, I discussed and wrote at least four different letters and many phone calls to Mr. Stewart referencing my concerns of the management of

my three cases, however to no avail. *True and correct copies of letters from the Defendant to Mr. Stewart, in particular dated May 22, 1995, May 26, 1995, June 15, 1995 and June 21, 1995 are attached hereto as Exhibits "A" - "D" respectively.*

Finally, after several attempts at contacting Mr. Stewart and feeling that he had indeed abandoned me in favor of the opposition, I requested that Mr. Stewart substitute himself out of the case, in favor of myself in pro-Per and surrender to me his files in the three cases.

On or about June 29, 1995 I formally wrote to Mr. Stewart notifying him of his discharge and again requesting that he sign substitution of attorney forms on the two remaining municipal court cases which were provided in the letter. *True and correct copies of the letter dated June 29, 1995 sent to Mr. Stewart from the Defendant is attached hereto as Exhibit "E".*

On or about July 3, 1995 Mr. Stewart responded to the letter in writing stating that he (Mr. Stewart) would be filing the appropriate forms by July 7, 1995. *True and correct copies of the letter dated July 3, 1995, 1995 sent to the Defendant from Mr. Stewart is collectively attached hereto as Exhibit "F".*

On or about July 11, 1995 I again wrote to Mr. Stewart requesting verification of the substitution and his files, however to date none have been received. *True and correct*

copies of the letter dated July 11, 1995 sent to Mr. Stewart from the Defendant is attached hereto as Exhibit "G".

On or about July 19, 1995 I checked my file with the two Municipal Courts and the files indicated that no such forms were filed, further the Defendant received no files from Mr. Stewart.

As a result I filed motions in both of the Municipal Court cases to formally remove Mr. Stewart and to try to get a court order directing him to return my files. To this end, at the time of this writing one of the two cases in Municipal Court of West Los Angeles, Purdue Street, has come to hearing resulting in an order removing Mr. Stewart as my attorney of record. *True and correct copies of the Order dated August 9,1995 is attached hereto as Exhibit "H".*

Subsequent to this I received a very threatening letter from Mr. Stewart demanding purported unpaid legal fees, as well as threatening to sue the attorney whom I had asked to dismiss the Superior court case for contractual interference. To this end I attach to this a copy of the retainer agreement Mr. Stewart showing that he agreed to take my cases on contingency with an hourly rate of $50.00 per hour. To this I would respectfully show in this association that I have paid Mr. Stewart in excess of $3,700.00 in fees and over $1,200.00 in costs *Refer to collective Exhibits* ____. Further to this I ask how anyone could interfere with

future contractual advantage when the aggrieved party advised that he was no longer on the case?

It is apparent by the actions of Mr. Stewart that he is per-se out of control, unethical and unprofessional and is acting to nobody's benefit but his own, and even possibly for the opposition. His actions have not only caused me a great deal of distress and turmoil but may have also damaged the cases on which he was hired in an amount yet to be determined. Further from these actions I suspect, as previously stated, the three attorneys herein complained upon, are and were somehow acting in conjunction with one another against me and to my detriment. These actions are not only unfair and unethical but also violate the very provisions as set forth by the California Bar Association.

The unprofessional actions and attitudes demonstrated towards me by Klopfenstein, Polin and Stewart have been unethical, mean-spirited and quite obviously below the high standard which I assume this California State Bar Association holds its members to.

For this reason I file this complaint and ask the California State Bar Association intervention so that the actions and occurrences described herein may be stopped, both from occurring again to me or anyone else.

I declare the foregoing to be true under penalty of perjury under the laws of

the State of California.

Executed this 18th day of August, 1995 at Los Angeles, California.

\S\

Michael M. Sherman

SECOND APPELLATE DISTRICT, DIVISION FOUR

S061613

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
JAN 3, 1995
ROBERT WANDRUFF CLERK

MICHAEL M. SHERMAN, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent
JEROME SHERMAN, et al., Real Parties In Interest

Applcation for stay and Petition for review DENIED

LUCAS
Chief Justice

APP. 25b

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12548 Ventura Blvd. Studio City 91604.

On June 26, 1998 I served the following document(s) described as PETITION FOR CERTIORARI on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

The State Bar of California
1149 S. Hill St.
Los Angeles, CA 90015

CALIFORNIA SUPREME COURT
300 S. SPRING ST., FL 2
LOS ANGELES, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 26, 1998, at Los Angeles, California.

Arnold Sarkissian

Arnold Sarkissian